

THE STATE OF ARIZONA  
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S FINAL APPROVED TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona  
December 20, 2006  
9:30 a.m.

Reported By:

Angela Furniss Miller, RPR  
Certified Reporter (AZ 50127)

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1 A PUBLIC MEETING, BEFORE THE CITIZENS CLEAN  
 2 ELECTIONS COMMISSION, convened at 9:30 a.m. on December  
 3 20, 2006, at the State of Arizona, Clean Elections  
 4 Commission, 1616 W. Adams, Conference Room, Phoenix,  
 5 Arizona, in the presence of the following Board members:  
 6 Ms. Marcia Busching, Phoenix, Chairperson  
 7 Mr. Gary Scaramazzo, Page  
 8 Ms. Ermila Jolley, Yuma  
 9 Mr. Carl Kunasek, Maricopa  
 10 Ms. Royann J. Parker, Pima  
 11 OTHERS PRESENT:  
 12 Todd Lang, Executive Director  
 13 Diana Varela, Assistant Attorney General  
 14 Colleen McGee, Deputy Director  
 15 Paula Ortiz, Executive Assistant  
 16 Christina Murphy, Fiscal Services Manager  
 17 Michael Becker, Voter Education Manager  
 18 Daniel Ruiz II, Campaign Finance Manager  
 19 Eric Peterson, Administrative Counsel  
 20 Rita Azcona, Administrative Assistant III  
 21 Eric Ehst, Clean Elections Institute  
 22 Jim Barton, Torres Campaign  
 23 Christian Palmer, Arizona Capital Times  
 24 Lee Miller, Citizen  
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1 at the end.  
 2 CHAIRPERSON BUSCHING: Okay. Any other  
 3 additions or corrections?  
 4 If not, is there a motion?  
 5 COMMISSIONER SCARAMAZZO: So moved.  
 6 CHAIRPERSON BUSCHING: Second?  
 7 COMMISSIONER PARKER: Second.  
 8 CHAIRPERSON BUSCHING: It's been moved by  
 9 Commissioner Scaramazzo and seconded by Commissioner  
 10 Parker that we approve the November 30th, 2006  
 11 Commission meeting minutes as amended. All in favor say  
 12 "aye."  
 13 (Chorus of ayes.)  
 14 CHAIRPERSON BUSCHING: Opposed, nay?  
 15 Chair votes aye. Motion carries.  
 16 Item III, Executive Director report. Mr. Lang?  
 17 MR. LANG: Thank you, Madame Chair. Good  
 18 morning, Commissioners. I'm pleased to announce with us  
 19 today is Rita Azcona. Rita, can you stand up for the  
 20 Commission and say hi?  
 21 MS. AZCONA: Good morning. Nice meeting you.  
 22 MR. LANG: She's our new Administrative  
 23 Assistant III. She's doing great. She can handle all  
 24 the guff we give her and dishes it right back. And  
 25 she's doing very well and we're very happy to have her.

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## P R O C E E D I N G

3 CHAIRPERSON BUSCHING: Good morning. I'm  
 4 Marcia Busching. I'm chairman of the Citizens Clean  
 5 Elections Commission. Today is Wednesday, December  
 6 20th, at 9:35 a.m. and I will declare this meeting in  
 7 session.

8 It's -- we're at 1616 West Adams, Suite 110,  
 9 Phoenix, Arizona 85007.

10 Pursuant to ARS Section 38-431, the -- it is a  
 11 meeting of the Citizens Clean Elections Commission, the  
 12 Commission may vote to go into executive session which  
 13 will not be open to the public for any item listed on  
 14 the agenda or for obtaining legal advice.

15 All matters on the agenda may be discussed,  
 16 considered, and subject to action by the Commission.

17 Item II, approval of the November 30th, 2006  
 18 Commission meeting minutes. Ms. Parker, I understand  
 19 you have some corrections.

20 COMMISSIONER PARKER: I just found one on page  
 21 nine, line 12. It should read: "The Commission on  
 22 Appellant Court Appointments."

23 CHAIRPERSON BUSCHING: Okay.

24 COMMISSIONER PARKER: And change the "and" to  
 25 "on," capitalize the "A" on Appointment, and add an "S"

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1 The COGEL conference was great. Chair  
 2 Busching, Commissioner Parker, and I were all able to  
 3 attend. We were able to get lots of information on  
 4 clean elections and campaign finance issues in general.  
 5 This is a report -- there was tons of material, of  
 6 course, but this is a report by the Center for  
 7 Governmental Studies on public financing across the  
 8 county. A lot of data.

9 I noticed that some of the Arizona data wasn't  
 10 up to date because they weren't contacting us. We  
 11 corrected that and they now have the right information.

12 So that was the kind of information we were  
 13 able to receive. The speakers were good and New Orleans  
 14 was certainly good. I hope that Commissioner Scaramazzo  
 15 and Commissioner Kunasek can maybe consider joining us  
 16 next time in Canada, I guess.

17 COMMISSIONER PARKER: Vancouver.

18 MR. LANG: Other than that, Miller Allen has  
 19 begun the auditing process and will start making  
 20 appointments with candidates to review their books and  
 21 get through that process.

22 Mike Becker is hard at work on the voter  
 23 education issues. Mike, Daniel, and Eric are a little  
 24 subcommittee on rules and have been working on some  
 25 rules that Ive asked them to address. And we're working

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1 on addressing some of the issues, but primary focusing  
2 on not on the issues that came up, but making things  
3 easier to understand.

4 And as you know and as I've told you, Mike is  
5 working on organizing a group of interested parties to  
6 participate. That's not yet happened and we'll keep you  
7 in the loop of what they suggest that goes.

8 Other than that, I guess the rest of my report  
9 speaks for itself.

10 Commissioner Jolly will not be able to attend  
11 our January meeting in person, and so as you know, her  
12 good-bye luncheon is this afternoon right after the  
13 meeting today. We look forward to that.

14 COMMISSIONER SCARAMAZZO: Party.

15 COMMISSIONER JOLLY: Yeah, Christmas party.

16 CHAIRPERSON BUSCHING: Other there questions of  
17 Mr. Lang?

18 Mr. Lang, could you refresh my recollection, if  
19 Ms. Jolley's successor is not appointed at the time that  
20 her term ends, she continues to serve though, right?

21 MR. LANG: Madame Chair, that's correct.

22 CHAIRPERSON BUSCHING: And have we heard  
23 anything about any choices, or -- or candidacies, or  
24 anything?

25 MR. LANG: Madame Chair, Commissioners, the

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1 process has begun with the Governor's office. We have  
2 not yet heard of any candidates. And, of course, we've  
3 offered our help, and if they need it, we will provide  
4 it.

5 CHAIRPERSON BUSCHING: Okay. And I have a  
6 question, one of the things that came out of the COGEL  
7 council was once again information about various state's  
8 disclosures. And Arizona I think comes in about 39th in  
9 terms of disclosure of the states. What things can we  
10 do to improve that?

11 MR. LANG: Well, they did note that we were one  
12 of the best states in terms because we have a hundred  
13 percent electronic filing. And the key or the challenge  
14 I think is to make that information readily available to  
15 the public from what I've read.

16 Currently Colleen McGee is negotiating with our  
17 vendors and we're also working with the Secretary of  
18 State's office. We have a meeting planned with Kevin  
19 Tyne next week to talk to them about our computer  
20 software and we're going to let them know the concerns  
21 we have or the suggestions we have.

22 And we're going to also look into seeing what  
23 kind of information we can provide online ourselves. So  
24 primarily what we need to do is make the campaign  
25 finance reports more easily available, and all the

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1 updates, and all that sort of information accurate and  
2 available.

3 CHAIRPERSON BUSCHING: And what do you think  
4 your timetable is for that?

5 MR. LANG: Well, I think 2007. Luckily we have  
6 that year, because obviously by the time the election  
7 cycle starts in 2008, everything needs to be in place.  
8 So we need to have the Secretary of State and our office  
9 should have whatever we decide to do in place by the end  
10 of the calendar year. And that's our goal.

11 CHAIRPERSON BUSCHING: Good. I like it. I  
12 want to it be my goal too.

13 Any other questions for Mr. Lang?

14 If not, we'll move to Item IV, consideration  
15 and decision whether there is reason to believe a  
16 violation occurred in MUR 06-0036, Len Munsil.

17 Mr. Lang?

18 MR. LANG: Thank you, Madame Chair. Mr. Maddox  
19 could not be here today because of a court  
20 appointment -- court appearance in federal court, but  
21 I've explained to him my recommendation and why I felt  
22 my recommendation was the correct one.

23 But this is a complaint by the Democratic Party  
24 regarding the Munsil Campaign. In particular the  
25 Democratic Party -- and you have the complaint which is

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1 at Exhibit A of this, you have the response by Mr.  
2 Maddox on behalf of the Munsil Campaign which is at B,  
3 and attached to that is Noble -- Shawn Noble's affidavit  
4 or verification actually, and then at D is a  
5 supplemental response to C -- which is an e-mail by our  
6 campaign finance manager Daniel Ruiz to Mr. Maddox  
7 asking for some clarification -- and then D is the  
8 Maddox response on behalf of the Munsil Campaign. And,  
9 again, it's verified.

10 So, in both cases we have a sworn statement by  
11 Shawn Noble, the person at issue here, attesting to the  
12 fact that the representations made by Mr. Maddox are, in  
13 fact, correct. What it comes down to is the fact Shawn  
14 Noble volunteered for the Munsil Campaign in the primary  
15 and then in general went to work for the Republican  
16 Party of Arizona. And the Democratic Party is concerned  
17 that these payments, which were a great deal of money,  
18 were, in fact, simply channeled to help Shawn Noble help  
19 the Munsil Campaign. And that, in fact, they were  
20 really in-kind contributions to the Munsil Campaign.

21 And what you have here is a sworn statement  
22 saying, in fact, Noble did not work on the Munsil  
23 Campaign, he did not receive any money to do any work on  
24 behalf of the Munsil Campaign, and there's no indication  
25 otherwise.

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1 I think it's a circumstantial -- you know, I  
2 think any opposing party is going to raise concerns when  
3 a prominent consultant like Mr. Noble is doing work,  
4 whether it's a Democrat or Republican. I think that's  
5 the nature of the game. People are competitive and want  
6 to know what's going on.

7 In this case I'm satisfied by the  
8 representations made by Mr. Maddox and in particular the  
9 sworn statements of Mr. Noble that, in fact, they  
10 weren't paid to do work for the Munsil Campaign, that  
11 they were doing get-out-the-vote work for the Republican  
12 Party. And based on that I recommend, the Commission  
13 find no reason to believe.

14 Also say that -- again, we've been talking  
15 about this with staff, in our rules we're going to  
16 provide more guidance and clarification on what  
17 consultants can do and that sort of thing, and what  
18 constitutes volunteer work and that sort of thing.

19 CHAIRPERSON BUSCHING: Are there questions of  
20 Mr. Lang?

21 Mr. Lang, I have a question in this regard.  
22 Typically, all of the strategizing and planning for  
23 campaign occurs either -- well, during the primary  
24 period. And while certainly some strategizing goes on  
25 during the general period and in response to things an

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1 opposing candidate says, a well-layed out campaign will  
2 generally put in place a strategy.

3 Should we be concerned here where we have  
4 someone who is an obvious strategist and worked on the  
5 Munsil Campaign during the primary and then goes to work  
6 for the party during the general election; and the  
7 party, obviously, did a lot of promotion in the context  
8 of slates during the general election, you know, using  
9 that information and strategy that was gained working  
10 for the candidate in the primary election just to  
11 further the purposes in the general election?

12 MR. LANG: Well, I think -- Madame Chair, I  
13 think that there is a legitimate concern there any time  
14 you have somebody who worked for one campaign and goes  
15 to work for the party, and a party is doing independent  
16 expenditures on behalf of that campaign it does raise  
17 the question and it's worth looking at regardless of the  
18 circumstances.

19 But in this case, I'm satisfied by the  
20 affidavits that, in fact, no unethical behavior  
21 occurred. That he did not focus his efforts on behalf  
22 of the Munsil Campaign. And I think if we want to  
23 regulate it more narrowly or more closely, I think we  
24 need to promulgate some rules that provide guidance in  
25 that area.

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1 Because I do think it raises the question, but  
2 I think what he did is not in violation of our rules or  
3 policies. And until we have more specific guidance to  
4 campaigns, I think that -- I don't think there's a  
5 violation here.

6 CHAIRPERSON BUSCHING: Any other questions of  
7 Mr. Lang?

8 COMMISSIONER KUNASEK: Madame Chair, did Mr.  
9 Noble work for the Shaddick Campaign in the primary?

10 MR. LANG: Madame Chair --

11 COMMISSIONER KUNASEK: Or excuse me, for the  
12 Munsil Campaign.

13 MR. LANG: Yes, he did as an unpaid volunteer.

14 COMMISSIONER KUNASEK: Okay. Unpaid volunteer.  
15 Okay. Thank you.

16 CHAIRPERSON BUSCHING: Is there anyone from the  
17 public that wishes to speak to this matter?

18 If not, I'll turn to discussions or a motion by  
19 the Commission.

20 COMMISSIONER SCARAMAZZO: I move we find no  
21 reason to believe in MUR 06-0023 [sic] and thank the  
22 staff for the diligence in doing their homework to come  
23 to that conclusion.

24 COMMISSIONER PARKER: You mean 36?

25 COMMISSIONER SCARAMAZZO: Excuse me. Yes. I

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1 apologize.

2 CHAIRPERSON BUSCHING: Okay. Is there a  
3 second?

4 COMMISSIONER KUNASEK: Second.

5 CHAIRPERSON BUSCHING: It's been moved by  
6 Commissioner Scaramazzo and seconded by Commissioner  
7 Kunasek that we find no reason to believe in MUR  
8 06-0036, Len Munsil. All in favor say, "aye."

9 (Chorus of ayes.)

10 CHAIRPERSON BUSCHING: Opposed, nay?

11 Chair votes aye. Motion carries.

12 Item V, MUR 06-0035, Debra Boehlke, probable  
13 cause recommendation.

14 Mr. Lang?

15 MR. LANG: Thank you, Madame Chair,  
16 Commissioners. You see that actually Ms. Boehlke is  
17 subject of this agenda item and also the next one; IV(B)  
18 is a settlement agreement we reached with her. And, of  
19 course, we're splitting it up to make sure that  
20 everything is clear.

21 The probable cause recommendation really finds  
22 two -- two problems: First, Ms. Boehlke expended  
23 primary monies for postcards that she was going to use  
24 only during the general; and, second, she loaned her  
25 campaign \$40 on September 8th that was reimbursed on

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1 September 10th, which is technically a violation of our  
2 rules.

3 This is another area that we plan to address in  
4 our rules to provide more guidance to candidates. But  
5 basically what happens is candidates make purchases,  
6 reimburse themselves with campaign money because they  
7 use their own personal credit card, and that's  
8 effectively a loan. Now if they did it the same day as  
9 she did with the larger amount, you see that on page  
10 three, part two, you see that the -- she on September  
11 8th, she made a \$39.65 expenditure. Due to some errors,  
12 that was the wrong amount. But because of some issues  
13 regarding the order, only a partial order was executed.  
14 And then on the 10th she paid for the full amount,  
15 \$307.24. On that same day she was reimbursed for both.

16 So she obviously attempted to comply here. But  
17 the problem was there was a two-day delay before she was  
18 reimbursed for the \$39.65. That's a violation because  
19 it happened after the qualifying period. And so I  
20 recommend that we find reason to believe.

21 The second is -- and she acknowledges this --  
22 that she bought literature on election day, on the  
23 primary election day for -- to provide campaign  
24 literature at \$562.59. That's clearly a violation. It  
25 was obviously intended for the general. She used the

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1 primary money. And so there we also recommend that you  
2 find reason to believe.

3 I should say that normally in these procedures  
4 I am required to write a brief and she has 14 days to  
5 respond, but because we settled and because she wanted  
6 to resolve this matter, she agreed to waive the  
7 requirements and she sent us e-mails to that effect.

8 So, although there has not been a final brief,  
9 she obviously saw the original probable cause -- I mean  
10 the original reason to believe, and -- and she's seen  
11 the draft of the probable cause brief and has no  
12 objections to it.

13 And so you see here the penalties. It's for  
14 the \$39.65. She used her personal money. That's a  
15 10-times-the-limit violation, so the penalty there is  
16 \$396. The repayment order is because she used primary  
17 money for the general, she has to repay that \$562.59.

18 So we ask you to find probable cause there's  
19 been a violation and order the repayment of \$562.59 for  
20 the first violation and order a penalty of \$396.50 for  
21 the second violation.

22 If it helps you by reference, you can look at  
23 the settlement agreement and see that she already set  
24 aside the money to repay the disputed amount, the \$562.  
25 And that we agreed to a penalty of the original of the

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1 amount that she repaid too slowly, which is the \$39.65.

2 I ask you not to consider that settlement  
3 brief. I just have it there for your reference.

4 COMMISSIONER KUNASEK: Question.

5 CHAIRPERSON BUSCHING: Yes.

6 COMMISSIONER KUNASEK: I want to make sure I  
7 understand and I'll be the first to admit that I don't  
8 really know, she bought some general election materials  
9 the day -- or the day of the primary or the day before  
10 the primary; is that correct?

11 MR. LANG: That's correct.

12 COMMISSIONER KUNASEK: And she paid for them  
13 the day of or the day before, whatever the date was at  
14 that time?

15 MR. LANG: She made the initial agreement to  
16 net post for postcards on September 8th, which is  
17 actually three days before the primary.

18 COMMISSIONER KUNASEK: Okay. But that was for  
19 the general, for use in the general election?

20 MR. LANG: No, that was done on September 11.

21 COMMISSIONER KUNASEK: What would have happened  
22 to the money in her primary election account had she not  
23 done that?

24 MR. LANG: It would have been returned to the  
25 Commission.

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1 COMMISSIONER KUNASEK: And then she would have  
2 been awarded money to use in the general account?

3 MR. LANG: That's right.

4 COMMISSIONER KUNASEK: So the Clean Elections'  
5 account would have been reimbursed and two days later  
6 would have sent money out to expend in the general?

7 MR. LANG: That's right.

8 COMMISSIONER KUNASEK: I guess there's  
9 something about that picture that I don't understand.  
10 It's the same money.

11 MR. LANG: Well, yes, but --

12 COMMISSIONER KUNASEK: It's just a matter of an  
13 accounting date.

14 MR. LANG: Well, if it helps the Commission, I  
15 would argue that it's a pot -- two separate pots of  
16 money. One pot of money you can use for the primary and  
17 a separate pot of money you can use for the general.  
18 The problem is she dipped into the primary pot for the  
19 general.

20 And the reason those pots have to be separate  
21 is we want everything to be equal. We don't want her to  
22 be able to spend more money than she's entitled to for  
23 the general. And by taking primary money for general  
24 election purposes, she's actually getting more money  
25 than she's supposed to get. She's getting an extra

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1 \$500.  
 2 That's why it's a violation. Even though it's  
 3 not a major one, it is a violation.  
 4 COMMISSIONER KUNASEK: She did report it?  
 5 MR. LANG: Uh-huh.  
 6 COMMISSIONER KUNASEK: Would it be just an  
 7 accounting entry then if that were deducted from her  
 8 general award, the amount of money she got for the  
 9 general election?  
 10 MR. LANG: No, it wouldn't have been deducted,  
 11 it would have been given to her for the general.  
 12 And the point of it is, you have different  
 13 people you're going against in your primary than your  
 14 general, so we don't want people to use the primary  
 15 money for the general.  
 16 It's not just an accounting problem I guess is  
 17 my point.  
 18 COMMISSIONER KUNASEK: Okay.  
 19 MR. LANG: I understand your point, which is  
 20 we're not talking Nixon or Watergate tapes. This is  
 21 just --  
 22 COMMISSIONER KUNASEK: It just seems to me it's  
 23 all the same money, the only difference is the date it  
 24 occurred.  
 25 MR. LANG: It's all Clean Elections' money but

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1 the purpose is different.  
 2 COMMISSIONER KUNASEK: I understand. Okay.  
 3 Thank you.  
 4 CHAIRPERSON BUSCHING: Commissioner Jolley?  
 5 COMMISSIONER JOLLEY: Yes, I have a question of  
 6 Todd.  
 7 Todd, now are you sure these were not palm  
 8 cards that she used to give out on primary election day?  
 9 MR. LANG: She's made it clear -- she  
 10 acknowledged it was for the general election, not for  
 11 the primary.  
 12 COMMISSIONER JOLLEY: Okay. Okay. Because  
 13 that is justifiable, isn't it?  
 14 MR. LANG: Sure.  
 15 COMMISSIONER JOLLEY: You can go out and buy  
 16 cards and give them out on the primary election day.  
 17 MR. LANG: She didn't get them until after the  
 18 primary was over.  
 19 COMMISSIONER JOLLEY: Oh, thank you.  
 20 CHAIRPERSON BUSCHING: Commissioner Kunasek?  
 21 COMMISSIONER KUNASEK: Did she know at that  
 22 time who the opponent in the general election was going  
 23 to be?  
 24 In other words, did the person who was in the  
 25 general election have a primary opponent? Did her

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1 opponent in the general election have an opponent in the  
 2 primary election, so she would have known who was going  
 3 to be in the general election without an opponent in the  
 4 primary?  
 5 MR. LANG: I am told by the staff, by Daniel,  
 6 that her opponent did not have a primary opponent. So  
 7 she did know.  
 8 COMMISSIONER KUNASEK: Okay. Well, she knew  
 9 who the opponent was going to be -- well, anyway. I  
 10 have a clear picture now.  
 11 CHAIRPERSON BUSCHING: Okay.  
 12 COMMISSIONER KUNASEK: Yes. Thank you.  
 13 CHAIRPERSON BUSCHING: Is there anyone from the  
 14 public that wishes to speak to this matter?  
 15 If not, turn to discussion or a motion on Item  
 16 V(A), the probable cause recommendation.  
 17 Is there a discussion on this matter?  
 18 COMMISSIONER SCARAMAZZO: I'll --  
 19 COMMISSIONER JOLLEY: Okay. Well --  
 20 COMMISSIONER SCARAMAZZO: Okay. Go ahead.  
 21 COMMISSIONER JOLLEY: Okay. In the matter  
 22 under review, 06-0035, Debra Boehlke, that the  
 23 Commission -- I move that the Commission find that there  
 24 is a probable cause violation and that the Commission  
 25 impose a civil penalty of \$369.50 and a repayment order.

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1 CHAIRPERSON BUSCHING: Were you intending by  
 2 your motion to follow the probable cause recommendation?  
 3 COMMISSIONER JOLLEY: Yes. The probable cause  
 4 and then we'll have a motion, I believe, on Item (B).  
 5 CHAIRPERSON BUSCHING: Okay. I think -- okay.  
 6 Is there a second?  
 7 COMMISSIONER KUNASEK: I will second it.  
 8 CHAIRPERSON BUSCHING: It's been moved by  
 9 Commissioner Jolley and seconded by Commissioner Kunasek  
 10 that the Commission adopt the probable cause  
 11 recommendation of the Executive Director in MUR 06-0035,  
 12 Debra Boehlke. Any further discussion?  
 13 If not, the Chair will call for the question,  
 14 all in favor say "aye."  
 15 (Chorus of ayes.)  
 16 CHAIRPERSON BUSCHING: Opposed, nay?  
 17 Chair votes aye. Motion carries.  
 18 Item V(B), MUR 06-0035, Debra Boehlke, proposed  
 19 settlement agreement.  
 20 Mr. Lang?  
 21 MR. LANG: Thank you, Madame Chair. We have a  
 22 settlement agreement in the same matter. And I think as  
 23 some of Commissioner Kunasek's questions and comments go  
 24 to, this is not a major violation and we were pleased to  
 25 settle this with Ms. Boehlke.

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1 As you can see here, the recommendation is that  
 2 she follow the repayment order. She in good conscious  
 3 and in smart thinking set aside that money understanding  
 4 that there was a problem, and that her penalty be  
 5 reduced to simply the \$39.65 for the postcards.  
 6 There's no need for the 10-times penalty  
 7 because obviously it was a minor violation. We're  
 8 talking two days on a small expenditure. And so a token  
 9 penalty I think is appropriate in this case.  
 10 She's agreed to that and has waived her right  
 11 to a brief by me and her chance to respond to that brief  
 12 and has agreed to both the finding and the settlement;  
 13 and, therefore, I ask the Commission approve the  
 14 settlement.  
 15 CHAIRPERSON BUSCHING: Any questions of Mr.  
 16 Lang?  
 17 COMMISSIONER KUNASEK: I'm looking at page  
 18 Roman Numeral V(B). I don't see any amount -- maybe I  
 19 don't have the whole thing.  
 20 MS. VARELA: Page three.  
 21 COMMISSIONER KUNASEK: Oh, turn back a page.  
 22 Thank you.  
 23 I thought that was the previous tab.  
 24 CHAIRPERSON BUSCHING: It might have been.  
 25 Commissioner Jolley?

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1 that we approve the proposed settle agreement in MUR  
 2 06-0035. All in favor say, "aye."  
 3 (Chorus of ayes.)  
 4 CHAIRPERSON BUSCHING: Opposed, nay?  
 5 Chair votes aye. Motion carries.  
 6 Item V(C), MUR 04-0079, Rick Murphy, Executive  
 7 Director's recommendation.  
 8 Mr. Lang?  
 9 MR. LANG: Thank you, Madame Chair. What you  
 10 have -- what you have is simply a campaign finance  
 11 report. And then also you will see you have a folded  
 12 printout of some of the other campaigns -- the other  
 13 complaints involving cases where the candidate has  
 14 failed to provide subvendor information.  
 15 And as you'll note as you go through all of  
 16 those, in the cases where that subvendor information was  
 17 ultimately provided, the Commission dismissed the  
 18 enforcement actions and assessed no penalty or no  
 19 finding of violation. And we've done that consistently  
 20 through this election cycle because we understand it's  
 21 sometimes difficult to get subvendor information,  
 22 certainly at the time of the expenditure. And so people  
 23 have been real cooperative and so the Commission has  
 24 been consistent with that. As long as the public gets  
 25 the information, it's been satisfied.

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1 COMMISSIONER JOLLEY: Yes. I have a question.  
 2 What is the time frame for her to repay this? Is there  
 3 a date?  
 4 MR. LANG: Well, she has already set aside the  
 5 funds, so she's set and the penalty is due immediately.  
 6 COMMISSIONER JOLLEY: Okay.  
 7 MR. LANG: Actually, Daniel Ruiz corrects me.  
 8 In fact, she's already paid both the fine and the  
 9 repayment.  
 10 CHAIRPERSON BUSCHING: Okay. Mr. Lang, I think  
 11 that Commissioner Jolley's point is a good one, that if  
 12 the candidate has not already paid the penalties and  
 13 fines, that there should be a date by which that gets  
 14 done and put into the settlement agreements.  
 15 MR. LANG: I agree.  
 16 CHAIRPERSON BUSCHING: Is there anyone from the  
 17 public that wishes to speak to this matter?  
 18 If not, the Chair will entertain discussion or  
 19 a motion.  
 20 COMMISSIONER KUNASEK: Madame Chair, I would  
 21 move that in the case of the settlement agreement of  
 22 0035, that we approve that agreement.  
 23 COMMISSIONER PARKER: Second.  
 24 CHAIRPERSON BUSCHING: It's been moved by  
 25 Commissioner Kunasek and seconded by Commissioner Parker

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1 As you know, the Murphy matter has been going  
 2 on for a couple years now. And, in fact, it's one of  
 3 the first matters when I started here over a year ago  
 4 and been going on for quite a while at that point.  
 5 Mr. Lee miller is here as Mr. Murphy's attorney  
 6 and can speak to you. But the point I guess I'm getting  
 7 to is that subvendor information has been provided to  
 8 our satisfaction, staff has gone over it, and we're  
 9 pleased to tell you that despite Mr. Murphy's personal  
 10 belief that we are not entitled to the information, in  
 11 the interest of cooperation he has provided it. And I'm  
 12 quite pleased by that because it's the only case where  
 13 this issue was still outstanding.  
 14 And given that and although there's an  
 15 administrative hearing scheduled, and given the fact he  
 16 has come into compliance and the issue is well resolved,  
 17 I think it serves no one to continue this matter and  
 18 continue to litigate the matter, so I recommend that the  
 19 Commission dismiss the matter.  
 20 COMMISSIONER PARKER: That would mean his ALJ  
 21 hearing would be --  
 22 MR. LANG: Be terminated.  
 23 COMMISSIONER PARKER: -- be cancelled?  
 24 MR. LANG: Yeah, be cancelled.  
 25 CHAIRPERSON BUSCHING: Okay. Other questions

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1 of Mr. Lang?

2 Commissioner Jolley?

3 COMMISSIONER JOLLEY: Yes. I just have a  
4 comment. In the future is there a rule that will give a  
5 time frame or time limit to respond to information that  
6 we need?

7 I mean, this has been going on since, what,  
8 2004?

9 MR. LANG: Madame Chair, Commissioner Jolley,  
10 we can certainly put such a rule in place. We have the  
11 enforcement mechanism to require compliance, we can  
12 subpoena records, we can do depositions, all those sorts  
13 of things. But in this case, this wasn't really about  
14 providing the factual information. This was a legal  
15 dispute regarding whether or not we had the authority at  
16 the time to require the subvendor information.

17 Since Mr. Murphy -- Representative Murphy has  
18 provided it, I think it's prudent to consider the matter  
19 resolved. But we can provide timelines in the future if  
20 you'd like.

21 MS. VARELA: If I may, Madame Chair and  
22 Commissioner Jolley, it's been going on for a long time,  
23 but for example, this most recent hearing was originally  
24 scheduled for July. Because of our workload in our  
25 office with the election going on, I had asked that Mr.

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1 Murphy agree to a continuance, which he did. He then  
2 needed a continuance, then Mr. Miller got involved, so  
3 it's been going on for a long time and it has been a  
4 period of time. When you want to reschedule with OHA,  
5 they can't do it in the next week.

6 It has been going on for a long time, but some  
7 of that is not Mr. Murphy's fault, not our fault, it's  
8 just the way the process has played out.

9 CHAIRPERSON BUSCHING: But at the same time  
10 this correction of the reports did not occur until  
11 recently.

12 MS. VARELA: That is true.

13 CHAIRPERSON BUSCHING: And I guess I want to  
14 speak to that issue because I pretty steadfastly have  
15 said that while I really appreciate the fact that people  
16 correct their reports and bring the detail that is  
17 required, that we shouldn't allow that to just happen at  
18 any point in time. Particularly when it happens long  
19 after the election is over and so the value of the  
20 information has diminished greatly with respect to the  
21 -- the race.

22 And that under those circumstances where it  
23 takes a long time to get the candidates to come into  
24 compliance, and takes staff, and for that -- for that  
25 matter in this case legal time, that there should be a

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1 penalty imposed so that candidates are not encouraged to  
2 be sloppy in their filings in the first instance and  
3 then drag their feet and only at the 11th hour come in  
4 and correct them to come into compliance.

5 So, unless somebody convinces me to the  
6 contrary, I am not going to vote in favor of the  
7 recommendation here.

8 But having said that, I will turn to the public  
9 and see if there's anyone that wants to speak to this  
10 matter.

11 MR. MILLER: Madame Chair, Members, my name is  
12 Lee Miller. I'm here this morning in this matter on  
13 behalf of Representative Murphy. Representative Murphy  
14 most certainly wishes he could be with you here today,  
15 instead he's home in bed where he has been for the past  
16 few days. And, amazingly, he actually would really  
17 rather be here than where he is now.

18 The challenge in this particular instance for  
19 the Murphy Campaign was to get information that was not  
20 in its control from third parties. We were recently at  
21 the beginning of this month able to obtain that  
22 information, we made the corrections, we think we are  
23 now in compliance.

24 This type of issue, by and large, did not  
25 reappear in the 2006 campaign thanks to the Commission

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1 and the Commission staff doing a much better job  
2 educating candidates as to exactly what level of detail  
3 was expected and what they should request of their  
4 vendors in the beginning so that you had all the  
5 information the Commission thought was required up front  
6 so you could get the reports right the first time.

7 With that, I will -- I will do my best to  
8 ask -- answer any further questions you have. And we  
9 sincerely hope we can close this matter today.

10 CHAIRPERSON BUSCHING: Are there any questions  
11 of Mr. Miller?

12 If not, thank you.

13 MR. MILLER: Thank you, Madame Chair, Members.

14 COMMISSIONER SCARAMAZZO: Thank you.

15 CHAIRPERSON BUSCHING: Sir, if you come forward  
16 and state your name, please.

17 MR. EHST: Eric Ehst from the Clean Elections  
18 Institute.

19 Madame Chair, Commissioners, I would just like  
20 to reiterate something that the Chair already said.  
21 That in this matter I understand the Commission's  
22 willingness to forego imposing penalties on candidates  
23 when they are told they are not in compliance with the  
24 rules and come into compliance with the rules.

25 In this matter, which has been going on for



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1 more than two years now, Representative Murphy has  
 2 consistently stonewalled this Commission. And I was  
 3 actually at a previous Commission meeting where he said  
 4 to the Commission that if he had the information to give  
 5 to you, he would not give it to you because he did not  
 6 think it should be public record and that -- that he was  
 7 required to do it.

8 So I -- I strongly disagree with the statement  
 9 you just heard that he just now got the information two  
 10 years after the fact and can provide it to you.

11 I agree with what the Chair said, that this  
 12 Commission has spent an awful lot of time, and effort,  
 13 and legal costs in pursuing this matter. The  
 14 information which pertained to the 2004 election is no  
 15 longer of any value to the public in determining the  
 16 race of the 2004 election, and -- and that to just  
 17 dismiss the matter out of hand is actually a slap at the  
 18 other candidates who have either been in compliance in  
 19 the first place or who have come into compliance  
 20 immediately after having been told that they needed to.  
 21 And that the Commission should not dismiss this matter  
 22 out of hand.

23 CHAIRPERSON BUSCHING: Are there questions of  
 24 Mr. Ehst?

25 If not, thank you.

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1 well established. That when we have a few minor  
 2 violations this election cycle, as soon as we raised it  
 3 with the folks they corrected it. It wasn't like 2004  
 4 where there was more widespread violations.

5 I think Mr. Barton's comments are well taken,  
 6 that this was a matter of principle for Mr. Murphy.  
 7 He's been critical of me and of staff, but I think that  
 8 he firmly believed he was in the right on this.  
 9 Luckily, he's now the beneficiary of good legal advice  
 10 and he has come into compliance.

11 And given that the rule is now well  
 12 established, that we didn't have compliance problems in  
 13 2006 when we asked people to fix it, I don't think we're  
 14 setting a negative precedent here by finding -- by  
 15 dismissing the matter.

16 I think we're acknowledging that a person who  
 17 had a strong difference of opinion, that Mr. Ehst  
 18 alluded to, has now come into compliance. I think  
 19 that's a good thing. I think that it sends a message to  
 20 the candidates that the rule is fairly clear. And I  
 21 think that given the fact that we didn't have a number  
 22 of problems with this issue in 2006, I don't think we'll  
 23 have problems in 2008. I don't think this sets a bad  
 24 precedent. So I stand by my recommendation.

25 CHAIRPERSON BUSCHING: Thank you.

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1 All right. Sir, come forward and state your  
 2 name, please.

3 MR. BARTON: Jim Barton, Perkins, Coie, Brown  
 4 and Bain. I just want to really quickly say I think the  
 5 Commission should be distinguishing between the person  
 6 asserting a legal right, in this case a candidate  
 7 disagreeing with a legal interpretation. I think that  
 8 should be treated differently than a candidate who fails  
 9 to comply, as you say, out of carelessness or out of  
 10 sort of a willfulness.

11 I think if there's -- if there's an honest  
 12 belief that the statutes are being wrongly interpreted,  
 13 I don't think the Commission should treat that as the  
 14 same as a sort of violation, you know, to benefit the  
 15 candidate or violation.

16 So, that's just my two cents.

17 CHAIRPERSON BUSCHING: Thank you. Any  
 18 questions of Mr. Barton?

19 If not, thank you. Anyone else from the public  
 20 wish to speak?

21 If not, we'll turn to discussion or a motion by  
 22 the Commission or Mr. Lang if you have any summary  
 23 thoughts.

24 MR. LANG: Thank you, Madame Chair,  
 25 Commissioners. I would only say that the rule is now

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1 COMMISSIONER SCARAMAZZO: Based on the  
 2 recommendation and based on the philosophy that's been  
 3 exhibited here, and I do believe that the candidates  
 4 have a right to go ahead and challenge the Commission  
 5 philosophically on whether they believe this is a  
 6 correct or incorrect interpretation, I'll move to  
 7 dismiss this matter regarding Rick Murphy.

8 COMMISSIONER PARKER: I'll second.

9 CHAIRPERSON BUSCHING: It's been moved by  
 10 Commissioner Scaramazzo and seconded by Commissioner  
 11 Parker that we dismiss MUR 04-0079, Rick Murphy. All in  
 12 favor say, "aye."

13 (Chorus of ayes.)

14 CHAIRPERSON BUSCHING: Opposed, nay?

15 COMMISSIONER JOLLEY: Nay.

16 CHAIRPERSON BUSCHING: Chair votes nay. Motion  
 17 carries.

18 I've been requested to move Item X up to the  
 19 next place on the agenda. Would any of the  
 20 Commissioners have any objection to that?

21 Okay. If not, I will call Agenda Item X,  
 22 discussion and possible action regarding Commission Rule  
 23 R2-20-104(F), officeholder expense and fund-raising by  
 24 new legislators prior to the start of this year's  
 25 legislative session.

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1 Mr. Lang?

2 MR. LANG: Thank you, Madame Chair. And thank  
3 you again for moving the agenda item. Mr. Miller has a  
4 conflict and asked that we move it up.

5 You have here on page -- on the bottom of page  
6 two of the rule, an excerpt that -- does everyone have  
7 that?

8 On the bottom of the second page you see here  
9 the officeholder expense account and goes through much  
10 of the same page. That is our officeholder expense  
11 rule. So that allows officeholders to raise small sums  
12 of money so they can communicate with constituents  
13 without either non-participating candidates triggering  
14 matching funds or participating candidates jeopardizing  
15 participation. That's why the rule exists.

16 An issue is -- a couple of issues have arisen.  
17 One is that after December 30th of an election -- I mean  
18 after April 30th of an election year, you can't raise  
19 any sort of funds and can't spend money. The problem is  
20 and we've addressed this previously, what about after  
21 the election before but the end of the year?

22 Well, this is a related problem. Here we have  
23 new officeholders who'd like to raise money from, I  
24 think, a particular lobbyist before session starts. As  
25 you can see in Mr. Miller's letter, the sort of ethos or

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1 able to do as he suggests that they should be able to  
2 do.

3 I also can tell you that Diana Varela has legal  
4 advice ready for you on this issue if you need it.

5 COMMISSIONER KUNASEK: At the time -- excuse  
6 me.

7 CHAIRPERSON BUSCHING: Go ahead.

8 COMMISSIONER KUNASEK: Okay. At the time,  
9 Todd, that the election canvas is announced by the  
10 Secretary of State, which in this case I think it was  
11 December 4th, doesn't the person who was successful in  
12 the general election become a representative elect? And  
13 then at that point shouldn't they rather than wait until  
14 the first of the year, they were -- they are -- are  
15 senator elect or whatever it's going to be, they carry  
16 the term elect. Which is, you know, as soon as they're  
17 sworn in they're -- they're in office, but they're not  
18 yet in office.

19 What would prevent them from beginning to try  
20 and collect for that account the day that the canvas is  
21 announced?

22 MR. LANG: Well, our point is they're not yet  
23 officeholders because, of course, what if the Governor  
24 called a special session on Christmas day, which is well  
25 after the canvas, who would sit in the particular

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1 the standing policy of the legislature is not to take  
2 any money from legislators -- from lobbyists during  
3 session for any purpose, whether it's permitted or not.

4 So it's a small window of opportunity from the  
5 1st to the 7th when session starts, or 8th when session  
6 starts, for them to raise some money. And new  
7 officeholders I think they're quite eager to do that for  
8 the constituent service account so they can start  
9 communicating.

10 Our rules, staff and I have agreed, do not  
11 permit that because they're not yet officeholders in our  
12 view until they're sworn in. But Mr. Miller has raised  
13 an interesting argument basically stating that the  
14 canvas of winners is issued on December 4th; and,  
15 therefore, they become an elected official.

16 So he argues that new members of the  
17 legislature should be able to raise money for their  
18 constituent service accounts in that small window of  
19 opportunity and he would like some feedback from the  
20 Commission.

21 And given the fact that staff told him we  
22 understand where you're coming from, we sympathize but  
23 we see the rule this way, we think it's important that  
24 the Commission weigh in and give us guidance on whether  
25 you think Mr. Miller is right and that folks should be

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1 elected slot? I think it would be the outgoing.

2 COMMISSIONER KUNASEK: The outgoing is still in  
3 office.

4 MR. LANG: That's right. So under that view,  
5 the newly-elected representative is not yet an  
6 officeholder. But, again, Lee has a different view and  
7 I know you will be interested to hear from him. But  
8 under our view because of that, they're not yet  
9 officeholders and they're not entitled to raise money  
10 under our rules.

11 To be fair to Lee, we didn't intend to ban any  
12 particular group from raising money. It was simply a  
13 calendar cutoff. But as a result of that calendar  
14 cutoff, the folks who he works with and who he  
15 represents in this matter are quite concerned.

16 So that's where we are. But I think ultimately  
17 they're not officeholders until they're sworn in.

18 COMMISSIONER KUNASEK: That's true, and --

19 CHAIRPERSON BUSCHING: And this --

20 COMMISSIONER KUNASEK: Excuse me.

21 CHAIRPERSON BUSCHING: Go ahead.

22 COMMISSIONER KUNASEK: And further question on  
23 the analysis or discussion we got here. And then on  
24 December 4th, is the person in office, can he still  
25 raise money for that account?

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1 MR. LANG: Actually, no. Because of the April  
2 30th cutoff. We have the April 30th of the election  
3 year, and that was a separate cut off.  
4 COMMISSIONER KUNASEK: Separate. Separate.  
5 MR. LANG: We're going to address this whole  
6 rule later but right now this is our rule.  
7 COMMISSIONER KUNASEK: Okay. Thank you.  
8 CHAIRPERSON BUSCHING: Commissioner Jolley?  
9 COMMISSIONER JOLLEY: Yes. I have a question  
10 for Todd.  
11 So if the one who currently has the office,  
12 what happens and he has lost and will no longer return  
13 to the legislature, what happens to his funds in the  
14 officeholder account? Does he have to exhaust it by  
15 April 30th or December 31st? How does it apply?  
16 CHAIRPERSON BUSCHING: If you don't use it by  
17 April 30th, it has to stay dormant or contribute it to  
18 the fund. So in that case it could stay dormant if they  
19 didn't contribute it to the fund until they took office  
20 or something.  
21 COMMISSIONER JOLLEY: Okay. Thank you.  
22 COMMISSIONER KUNASEK: In that case, if he is  
23 re-elected, he doesn't have to wait until he -- he  
24 doesn't have to wait until the session starts, he can  
25 start himself the first of the year to regain -- to

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1 week depending on when session starts. Starts on the  
2 first Monday.  
3 COMMISSIONER SCARAMAZZO: Sounds like a feeding  
4 frenzy, doesn't it?  
5 CHAIRPERSON BUSCHING: Any other questions of  
6 Mr. Lang?  
7 Commissioner Jolley?  
8 COMMISSIONER JOLLEY: I have a question of the  
9 Chair. So will there be a special committee formed to  
10 look into the situation, or is the staff doing this  
11 alone, or how is this going to --  
12 CHAIRPERSON BUSCHING: My understanding based  
13 upon Mr. Lang's report was that staff is putting  
14 together a comprehensive list of rules and/or statutes  
15 that need review and changing.  
16 I see nodding of heads "yes" behind you.  
17 COMMISSIONER JOLLEY: Okay.  
18 CHAIRPERSON BUSCHING: And that undoubtedly  
19 this one will be one of them since it is one of our  
20 rules.  
21 COMMISSIONER JOLLEY: So that the public will  
22 be able to respond or give their input?  
23 CHAIRPERSON BUSCHING: Yes.  
24 COMMISSIONER JOLLEY: Okay.  
25 CHAIRPERSON BUSCHING: Mr. Lang?

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1 gather money for his account, even though there was  
2 already a balance in there; is that right?  
3 MR. LANG: Well, if I understand correctly,  
4 Commissioner Kunasek, you're saying someone serves and  
5 sits out two years and then serves --  
6 COMMISSIONER KUNASEK: No, he serves and is  
7 re-elected, he has a balance left in his -- what do we  
8 call the account, officeholder account?  
9 MR. LANG: Yeah, he can --  
10 COMMISSIONER KUNASEK: There's a balance left  
11 in there, so the account is still an active account.  
12 Then as of the first of January, he can start collecting  
13 again to add to that balance?  
14 MR. LANG: And that's the complaint. That's  
15 the concerns raised by Mr. Miller on behalf of his  
16 clients. That ongoing officeholders get to raise money  
17 during this little window of opportunity and new  
18 officeholders don't. And since they're new, they don't  
19 have any money anyway and they feel like this is a  
20 missed opportunity.  
21 COMMISSIONER KUNASEK: Okay.  
22 COMMISSIONER PARKER: So the window is only  
23 that one week?  
24 MR. LANG: Yeah, before session starts.  
25 COMMISSIONER KUNASEK: And might not even be a

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1 MR. LANG: Madame Chair, staff obviously wants  
2 to work with candidates and officeholders as much as  
3 possible to make these procedures work. That's our  
4 goal.  
5 I should point out, and Diana reminds me, that  
6 these new legislators can raise money from individuals  
7 for their accounts. So this is how lobbyists --  
8 MS. VARELA: During that one week --  
9 MR. LANG: During that one week.  
10 MS. VARELA: Mr. Miller points out in his  
11 letter, it's the culture of the legislature they don't  
12 fund-raise. But it's self-imposed. It's not anything  
13 that the Commission rules prevent them from doing.  
14 During the legislative session which would  
15 start for them on January 8th, newly-elected  
16 officeholders would be able to collect money from  
17 individuals for their officeholder expense account.  
18 So, while I understand what he's saying, it is  
19 self-imposed. It is the case they could collect money  
20 from individuals during the legislative session.  
21 MR. LANG: But I am respectful of the culture  
22 that says it's bad form to raise money during session,  
23 and I understand that and that's why we're trying to  
24 work with them.  
25 As you recall from McConnell case, the United

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1 States Supreme Court case, regarding the campaign  
2 finance report, they said money given to a candidate for  
3 their re-election campaign is buying influence and all  
4 those issues that were raised, and money given to their  
5 candidate for constituents communication account, or  
6 whatever other purpose, serves the same sort of  
7 influence.

8 So, in the Clean Election sense, the purpose is  
9 get the money out. This represents the same sort of  
10 problem as the campaign donation offer. I just say that  
11 as a matter of background.

12 I still think Mr. Miller is raising a  
13 legitimate concern, but there are counter balance  
14 principles that maybe Eric was going to address anyway.  
15 Or somebody else from the public. But I just wanted to  
16 let you know the full gamut of what's going on here.

17 The bottom line, ongoing legislators or  
18 re-elected legislators can raise money during this week  
19 from lobbyists and new legislators cannot. And that's  
20 troubling to Lee and he raises some issues there in his  
21 letter.

22 CHAIRPERSON BUSCHING: Commissioner Parker?

23 COMMISSIONER PARKER: I guess I have a question  
24 in the sense of, if you're an officeholder and you have  
25 to go out and visit your constituents, why wouldn't you

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1 get money from the state travel to cover that? Did they  
2 change that in the last few years or something?

3 If you are doing state business you would  
4 get --

5 COMMISSIONER KUNASEK: Get reimbursed.

6 COMMISSIONER PARKER: -- reimbursed.

7 MR. LANG: I guess money is available, Mike  
8 looked into it, and -- but they have to get reimbursed  
9 by leadership and it's a cumbersome process. I'm not  
10 sure how prevalent that is and I'm sure Lee could  
11 educate me on this issue.

12 (Whereupon Commissioner Kunasek leaves the  
13 meeting room.)

14 COMMISSIONER PARKER: When you're state  
15 employees you get reimbursed. And I think a legislator  
16 showing that he had to go talk to --

17 COMMISSIONER SCARAMAZZO: To Lake Havasu or  
18 Page. There's an expense involved.

19 COMMISSIONER PARKER: Yeah, you know. Exactly.  
20 They could get reimbursed that way.

21 And why -- I guess I never understood the need  
22 for the account in a sense if travel is reimbursed.

23 MR. LANG: It's also for communication.

24 MS. VARELA: Sending out --

25 COMMISSIONER SCARAMAZZO: Christmas cards.

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1 MR. LANG: Newsletter, Capital update, here's  
2 what is happening at the Capital, here's what Royann  
3 Parker is doing for you.

4 COMMISSIONER PARKER: Right. Okay.

5 COMMISSIONER JOLLEY: So I have another  
6 question. So that if you're a newly-elected person, are  
7 you allowed to go out and visit your constituents, or  
8 because you have not taken office you can't do any type  
9 of constituency work until after January 8th?

10 MR. LANG: Madame Chair, Commissioner Jolley, I  
11 know of no such prohibition. I think anyone can go out  
12 and meet the constituents.

13 COMMISSIONER SCARAMAZZO: On their dime.

14 COMMISSIONER JOLLEY: That's what my question  
15 is.

16 COMMISSIONER PARKER: So, if individuals  
17 contributed to the office expense accounts, is that a  
18 deductible expense for them?

19 MR. LANG: You mean as -- no, it's not a  
20 nonprofit or charitable contribution.

21 COMMISSIONER PARKER: I know when you donate to  
22 a campaign, you can -- can you write that off?

23 MR. LANG: Not anymore.

24 COMMISSIONER PARKER: No, not anymore. It's  
25 just -- okay.

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1 CHAIRPERSON BUSCHING: Mr. Lang, you were  
2 referring to Mr. Miller's comments about ethics and  
3 lobbyists not contributing during the session but I  
4 thought there was an actual statute on that. Are you --  
5 do you know one way or another on that?

6 MR. LANG: Funny you should ask. A little elf  
7 just gave me a statute.

8 (Whereupon Commissioner Kunasek is present.)

9 MR. LANG: Yeah, there is prohibition on  
10 lobbyists giving contributions during session. There is  
11 an AG opinion that permits them to give monies to  
12 constituents service accounts as long as it's not for  
13 the purpose of communicating with the constituents for  
14 travel or inauguration or something. But there is a  
15 prohibition, 41-1234.01 that prohibits campaign  
16 contributions during session.

17 COMMISSIONER KUNASEK: So, that means --

18 MR. LANG: By law.

19 COMMISSIONER KUNASEK: -- it's a distinct  
20 advantage for the officeholder. He can get it in that  
21 week.

22 MR. LANG: Right.

23 COMMISSIONER KUNASEK: The newly-elected one  
24 cannot. And so he can cream the system in one week and  
25 there's nothing left even after session.

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1 MS. VARELA: But there is -- there is a cap as  
 2 to how much --  
 3 COMMISSIONER SCARAMAZZO: What the limit is.  
 4 MS. VARELA: -- I mean, it's not like they --  
 5 they get a head start, but it's not that much more money  
 6 they're going to get. Each officeholder gets a cap on  
 7 how much they can raise.  
 8 COMMISSIONER KUNASEK: In that office account?  
 9 CHAIRPERSON BUSCHING: Yes.  
 10 MS. VARELA: Yes.  
 11 COMMISSIONER KUNASEK: Okay.  
 12 CHAIRPERSON BUSCHING: And that's been one of  
 13 the complaints about it is it's been --  
 14 MS. VARELA: Two times the personal money  
 15 limits.  
 16 COMMISSIONER KUNASEK: Is the lobbyist in  
 17 session. I remember that well.  
 18 MS. VARELA: It's not a lot of money, but it's  
 19 double the --  
 20 COMMISSIONER SCARAMAZZO: Five -- \$5,000 or  
 21 \$6,000 is the limit on that.  
 22 COMMISSIONER KUNASEK: Okay.  
 23 CHAIRPERSON BUSCHING: Oh, all right. Any  
 24 other questions of Mr. Lang?  
 25 If not, I will see if anyone from the public

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1 who is the oldest member becomes the -- takes the chair,  
 2 calls the body to order, and asks the members to present  
 3 their certificates of election and to take the oath of  
 4 office.  
 5 So to me, the plain reading of 41-1101 is that  
 6 I've already become a member of the senate prior to the  
 7 taking of the oath, prior to the commencement of the  
 8 first organizational meeting of the senate.  
 9 I am not going to tell you anything other than  
 10 the reality that we're seeking this re-interpretation of  
 11 when elected officials, be they newly-elected officials  
 12 or returning elected officials, can take advantage of  
 13 officeholder expense accounts. Because that first week  
 14 in January, there are a plethora of fundraisers already  
 15 scheduled. Folks like me who make their living  
 16 representing clients of the legislature, I have my  
 17 social calendar for the first week in January is just  
 18 jam packed.  
 19 The folks -- the folks who are, quote, unquote,  
 20 newly-elected are at a significant fund-raising  
 21 disadvantage to the returning members. It is absolutely  
 22 true that the only folks who by law cannot give, are me,  
 23 lobbyists, registered lobbyists.  
 24 It would be perfectly okay for a newly-elected  
 25 legislator to on the 8th of January, the evening of the

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1 wishes to speak to this matter.  
 2 Mr. Miller, now that you've had the benefit of  
 3 hearing the questions and concerns of the Commissioners  
 4 and the Executive Director.  
 5 MR. MILLER: Madame Chairman, Members, Lee  
 6 Miller again in front of you.  
 7 Let me begin by sort of going all lawyer on you  
 8 and try and redirect you to your rule which says that  
 9 the person who is entitled to take advantage of this  
 10 account known as an officeholder expense account is an  
 11 elected official.  
 12 We have -- we've for the last 10 or 15 minutes  
 13 here, we've been chatting about officeholders. Well,  
 14 that's not what the rule says. The rule says that  
 15 elected officials can take advantage of the account.  
 16 And so from my point of view, the question is who is an  
 17 elected official?  
 18 I take the position that one becomes an elected  
 19 official when the canvas is complete. A supplemental  
 20 reference that I didn't include in my communication,  
 21 Arizona has a statute commanding the legislature as to  
 22 exactly when it is to meet for its first time. ARS  
 23 41-1101 says the two -- the legislature shall begin  
 24 meeting 12:00 noon on the second Monday of January of  
 25 each year. And at that time the member of the senate

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1 8th of January, go back home, hold an open house,  
 2 solicit, you know, friends and neighbors to come by the  
 3 house and put \$60 in the pot for the officeholder  
 4 expense account. That is perfectly okay as a matter of  
 5 law. As a matter of culture and tradition, that is not  
 6 a prudent thing to do.  
 7 We think setting aside the larger question of  
 8 whether officeholder expense accounts are a good idea or  
 9 not, that from a legal point of view, one becomes an  
 10 elected official which is the qualification to take  
 11 advantage of the officeholder expense account rule when  
 12 the canvas is complete. And that as a -- and that when  
 13 you follow that logic through, all elected officials  
 14 ought to be able to begin fund-raising on the first of  
 15 January.  
 16 Let me just jump forward and take on the  
 17 question about, well, can folks travel -- can members of  
 18 the legislature travel and be reimbursed by the  
 19 legislator?  
 20 The answer to that is, yes, you may when the  
 21 President of the Senate or the Speaker of the House  
 22 designates a particular trip as official state business.  
 23 Rest assured that the vast majority of travel by members  
 24 of the legislature to precinct committee meetings,  
 25 Kiwanis meetings, you know, go see your third-grade

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1 child's class at school and talk to them about civics,  
 2 none of that is considered official state business; and,  
 3 therefore, none of that type of travel is reimbursed.  
 4 Theoretically it could be. There isn't enough money in  
 5 the legislature budget to subsidize all the travel that  
 6 they do.

7 With that, Madame Chairman, Members, I'm  
 8 available for any additional questions.

9 CHAIRPERSON BUSCHING: Are there questions of  
 10 Mr. Miller?

11 COMMISSIONER KUNASEK: I would just comment. I  
 12 think what you have just outlined, it was the same as it  
 13 was 25 years ago when I was last there.

14 CHAIRPERSON BUSCHING: If not, thank you.

15 MR. MILLER: Thank you, Madame Chairman and  
 16 Members.

17 CHAIRPERSON BUSCHING: Is there anyone else  
 18 from the public that wishes to speak to this matter?

19 If not, we'll turn to summary, if you have one  
 20 Mr. Lang, or discussion by the Commission.

21 MR. LANG: Madame Chair, Commissioners, this  
 22 comes down to a policy question. I'm not necessarily  
 23 persuaded by Mr. Miller's supplemental authority, I  
 24 think there can be a lot of different interpretations of  
 25 the statute. But I do think he raises a valid issue

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1 regarding the fact that we say elected officials in our  
 2 rule can raise money as opposed to officeholder. So the  
 3 delicate question of when they become an officeholder I  
 4 think is probably when they're sworn in may not be the  
 5 deciding factor.

6 I think -- I think there is room there for you  
 7 to consider that they are elected officials when the  
 8 canvas is finalized. But, again, I think Diana has  
 9 legal advice for you if you need it.

10 Ultimately, it comes down to, do you want more  
 11 people getting lobbyist money versus should we treat  
 12 newly-elected officials the same as everyone else and  
 13 sort of give everybody a fair shot. As long as the rule  
 14 exists in the current form, should everyone have a  
 15 fair -- fair shot at that? And that's a policy decision  
 16 for you to decide.

17 COMMISSIONER SCARAMAZZO: And that policy  
 18 decision also deals with the ethical question. I think  
 19 for the general public, one of the reasons for Clean  
 20 Elections is the distaste that supposed lobbyists had  
 21 influence over legislators and their decisions in the  
 22 past. And that money is sometimes looked upon as not  
 23 the cleanest money available. So if you have that  
 24 one-week window of having this feeding frenzy going on,  
 25 I think that sends a very bad message to the general

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1 public about, you know, the overall system in place. I  
 2 have a problem with that one.

3 So I look at it and say I think there's more to  
 4 this than just who is an elected official. I think we  
 5 need to analyze officeholder expense accounts in general  
 6 as far as what the philosophy is.

7 CHAIRPERSON BUSCHING: Commissioner Kunasek?

8 COMMISSIONER KUNASEK: To expand a little on  
 9 that one, what was the philosophy as to creating  
 10 officeholder expense accounts?

11 MR. LANG: Madame Chair, if I may?

12 CHAIRPERSON BUSCHING: Please.

13 MR. LANG: I think the philosophy was -- and  
 14 again I refer to McConnell -- because there is a concern  
 15 raised in McConnell about the fact that officeholder  
 16 expense accounts are buying and influencing in the same  
 17 way we tried to get rid of it in terms of having and  
 18 providing public money. So that's the -- that's the  
 19 policy concern.

20 The policy reason for that is twofold. One is  
 21 we want to promote speech and constituent  
 22 communications. Sending newsletters about what's going  
 23 on in the legislature is the kind of speech we want to  
 24 promote. And the officeholder expense accounts are used  
 25 to communicate with their electorate. That's a good

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1 thing.

2 And the second part of it is we want to make  
 3 sure if the communication is occurring, it doesn't  
 4 interfere with the Clean Elections' system. If  
 5 participating candidates did the program, it would not  
 6 jeopardize their eligibility, and if non-participating  
 7 did this, it wouldn't somehow trigger match funds.

8 So the rules were designed to kind of isolate  
 9 it in a very clear, very tight area, had to all be done  
 10 before April 30th so there's no concern of  
 11 electioneering, or not a grave one. So that I think is  
 12 the reason the Commission promulgated this rule.

13 So it does raise the concern you're asking, but  
 14 regardless of how you resolve the issue before you  
 15 today, as Mr. Miller has presented it, it won't resolve  
 16 your issue because that's about the whole rule.

17 COMMISSIONER SCARAMAZZO: It's simplistic. The  
 18 way my mind works, simplistically if Clean Elections is  
 19 supposed to temper the influence of lobbyists on the  
 20 legislative body and we got -- the last thing I looked  
 21 at was \$27 million dollars in the bank -- why wouldn't  
 22 Clean Elections make funds available to constituent  
 23 services and go ahead and say, take that issue away, put  
 24 it away, put it to sleep, make money available to  
 25 communicate with your constituents, and you don't have

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1 that issue. Everybody, you know, it's a Christmas gift.  
 2 There you go.  
 3 MR. LANG: Is that -- are you proposing a rule?  
 4 COMMISSIONER SCARAMAZZO: I'd love to see  
 5 something.  
 6 COMMISSIONER KUNASEK: Better to eliminate the  
 7 whole provision.  
 8 COMMISSIONER SCARAMAZZO: Right. And we give  
 9 the legislators what they need to communicate.  
 10 MR. LANG: I assure you Commissioner Scaramazzo  
 11 and the rest of the Commissioners, we are re-evaluating  
 12 the whole rule and that is certainly one of the things  
 13 we're looking at among others.  
 14 COMMISSIONER KUNASEK: I guess my question went  
 15 to, my question went to aside from what the philosophy  
 16 is, who wanted this to begin with? Do we have any  
 17 historical record of who brought this idea forward to  
 18 the Clean Elections' people?  
 19 MR. LANG: I think they're interested  
 20 candidates in both parties. And there may be public  
 21 folks that want to speak it, but my recollection is  
 22 there were interested folks, officeholders, in both  
 23 parties who wanted this.  
 24 CHAIRPERSON BUSCHING: Mr. Miller, did you want  
 25 to comment?

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1 I would like legal advice. I'll make a  
 2 motion to go into executive session.  
 3 COMMISSIONER SCARAMAZZO: Do we need to go into  
 4 executive session to get this legal advice?  
 5 MS. VARELA: No, you can --  
 6 CHAIRPERSON BUSCHING: Oh.  
 7 MS. VARELA: I mean, you don't have to, but if  
 8 a majority of the Commission wants to go into executive  
 9 session.  
 10 CHAIRPERSON BUSCHING: Right. I understand.  
 11 MS. VARELA: But you make the motion and it  
 12 either passes or fails.  
 13 COMMISSIONER SCARAMAZZO: I don't see a reason  
 14 we need that legal advice in executive session dealing  
 15 with this.  
 16 COMMISSIONER KUNASEK: You mean whether to  
 17 change the rule, or do away with the rule, or anything  
 18 like that?  
 19 COMMISSIONER SCARAMAZZO: Whatever the legal  
 20 advice is.  
 21 MS. VARELA: I don't think that whether to  
 22 change the rule or to do away with the rule is what's on  
 23 the agenda. I think what we doing specifically right  
 24 now is addressing Mr. Miller's concern: Can  
 25 newly-elected legislators start to raise money on

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1 COMMISSIONER KUNASEK: I was going to say, it  
 2 sounds like the lobbyists would like to get rid of it.  
 3 MR. MILLER: Madame Chairman, Commissioner  
 4 Kunasek, yes.  
 5 But keep in mind that traditionally funded  
 6 candidates, who are fortunate enough to finish their  
 7 campaign with a positive balance in their campaign  
 8 account, continue to have access to those funds  
 9 throughout 'til the balance goes down to zero.  
 10 So a traditionally funded candidate may send  
 11 out a newsletter, may pay their cell phone bill, may  
 12 travel to a conference with money that they take from  
 13 their campaign account. Participating candidates, if  
 14 they have a positive balance on their account on  
 15 election day, the money goes back to the fund.  
 16 And so your participating candidates come into  
 17 the legislative session or come in to office with no  
 18 resources other than their personal funds and whatever  
 19 resources might be available to their office for  
 20 official governmental travel and whatnot to communicate,  
 21 to travel, to engage constituents.  
 22 So there is -- there is a -- at some level  
 23 there's an advantage for traditionally funded candidates  
 24 who can take advantage of that mechanism.  
 25 CHAIRPERSON BUSCHING: Thank you.

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1 January 1st or do they have to wait until January 8th?  
 2 I think that's the specific issue.  
 3 And in terms of dealing with the rule,  
 4 certainly that is -- a lot of people have raised that  
 5 concern with the rule in the past, and I think that's  
 6 something that staff will address at a future meeting.  
 7 CHAIRPERSON BUSCHING: Is there a second to my  
 8 motion?  
 9 If not, I will ask Ms. Varela if -- what your  
 10 opinion is of the situation.  
 11 MS. VARELA: Well, I think I would agree with  
 12 Todd's analysis. I think that the -- the newly-elected  
 13 members are not members until January 8th. I disagree  
 14 with Mr. Miller's analysis that once the canvas happens.  
 15 Because as Todd pointed out, if the Governor was to call  
 16 a special session next Friday, it's not the  
 17 newly-elected members who are going to be asked to show  
 18 up.  
 19 Having said that though, I also agree with Todd  
 20 though that the rule uses the phrase "elected official."  
 21 And think they're -- Mr. Miller makes a good point. I  
 22 think what it comes down to is a policy decision and  
 23 then it's something that the Commission could address  
 24 whether it's going to get rid of the rule or going to  
 25 change the rule. It could more specifically address it.

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1 I think right now it comes down to a policy  
 2 issue. Do you want to allow the newly-elected  
 3 legislators to be able to collect money from lobbyists  
 4 just like the old members are going to do for that one  
 5 week period of time?  
 6 CHAIRPERSON BUSCHING: All right. Thank you.  
 7 Any other questions or discussion?  
 8 If not, is there -- does someone want to make a  
 9 motion?  
 10 COMMISSIONER KUNASEK: Well, I don't know, I'm  
 11 trying to figure out what the motion would be. We've  
 12 had a discussion on it and I don't know if we're going  
 13 to be able to do anything and have it in place before  
 14 the start of the legislative session.  
 15 MS. VARELA: I'm sorry. Commissioner Kunasek,  
 16 if I could kind of help you frame the issue, I think  
 17 what we could do is essentially treat it as somewhat of  
 18 a no-action letter type thing. I don't think it  
 19 specifically falls under those, but I think the  
 20 Commission could make a policy statement that if either  
 21 newly-elected legislators raise money during that one  
 22 week period of time, the Commission will or will not  
 23 take enforcement action to provide guidance to the  
 24 newly-elected legislators.  
 25 COMMISSIONER KUNASEK: Well, in that case I

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1 would be happy to make a statement on a policy decision  
 2 but I'll ask you a question first. Why can't they,  
 3 since in our view they are not in office until they're  
 4 sworn in, even though they're elected, why do they have  
 5 to adhere to any of our rules?  
 6 Why can't they go out and get money from the  
 7 candidates during that time?  
 8 MS. VARELA: They're participating  
 9 candidates -- that's a good question. They are  
 10 participating candidates, so they have to adhere to the  
 11 rules.  
 12 COMMISSIONER KUNASEK: Does our rule say  
 13 participating candidate or elected official?  
 14 MR. LANG: It says elected official.  
 15 MS. VARELA: Elected official.  
 16 COMMISSIONER KUNASEK: And they haven't taken  
 17 office yet, so there's nothing to prevent them from  
 18 going out and getting Mr. Miller to cough up a couple  
 19 grand and give them a travel account, is there?  
 20 MR. LANG: I think there's an argument that  
 21 could be made, Commissioner Kunasek, that they'd lose  
 22 the safe harbor and they wouldn't be able to participate  
 23 if they raise money that somehow violated the Clean  
 24 Elections Act. I think that's one of the concerns.  
 25 I'm not saying that would happen, but I think

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1 that's the concern. And so that's why clarification is  
 2 requested.  
 3 COMMISSIONER KUNASEK: Well, I would -- I would  
 4 suggest or in the form of a motion propose that we  
 5 revisit that rule and devise a resolution to address the  
 6 concerns that have been raised here this morning.  
 7 CHAIRPERSON BUSCHING: Mr. Kunasek, can --  
 8 Commissioner Kunasek, could you clarify, on the specific  
 9 point of what's been requested as to whether a person  
 10 who is -- who is a participating candidate who has been  
 11 elected to office, are you stating that they may or may  
 12 not raise monies prior to the commencement or prior to  
 13 swearing into office?  
 14 COMMISSIONER KUNASEK: I'm -- I don't wish to  
 15 make a statement whether or not they can. I think  
 16 that's what we have to work out.  
 17 CHAIRPERSON BUSCHING: Okay. Is there a second  
 18 to the motion?  
 19 That seems to --  
 20 COMMISSIONER SCARAMAZZO: Well, let me ask a  
 21 question first. The motion as proposed, Carl, will that  
 22 go ahead and just basically lend a status quo to the  
 23 interpretation that it stands as today?  
 24 COMMISSIONER KUNASEK: That's -- that's -- I  
 25 would agree with that.

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1 COMMISSIONER SCARAMAZZO: Okay. Then I will  
 2 second that.  
 3 CHAIRPERSON BUSCHING: Okay. It's been moved  
 4 by Commissioner Kunasek and seconded by Commissioner  
 5 Scaramazzo that the Commissioner -- Commission take no  
 6 action with respect to the interpretation of the  
 7 officeholder expense rule and -- is that a fair  
 8 restatement?  
 9 COMMISSIONER KUNASEK: Sure. That we're just  
 10 -- we're going to leave it the way it is right now, with  
 11 the understanding that it will be reworked and hopefully  
 12 all of these concerns will be addressed in some fashion  
 13 or other.  
 14 CHAIRPERSON BUSCHING: Okay.  
 15 MR. LANG: Madame Chair, I just want to make  
 16 sure you understand -- I mean, I want to make sure I  
 17 understand, your point is this -- this re-working and  
 18 re-examination you're suggesting, this will not occur  
 19 before the next session.  
 20 COMMISSIONER KUNASEK: Well, the next session  
 21 -- you mean --  
 22 MR. LANG: We don't have another meeting before  
 23 the next legislative session.  
 24 COMMISSIONER KUNASEK: It would be I guess in  
 25 place for the next election cycle. This is every year



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1 though, isn't it?

2 MR. LANG: Yeah.

3 COMMISSIONER KUNASEK: Can they raise the

4 travel funds every year or just once in an election

5 cycle?

6 MR. LANG: Every year except after April 30th

7 of an election year. So every year, yes, but there's a

8 nine-month block or whatever that is.

9 MS. VARELA: It is not the -- the amount that

10 they can raise is two times the early contribution

11 limit. It is not -- it's not that amount each calendar

12 year, it's that amount for election cycle.

13 COMMISSIONER KUNASEK: For a cycle.

14 MR. LANG: But they can raise the money for

15 time --

16 MS. VARELA: But up to April 30th of an

17 election year. After to April 30th on an election year

18 they can't spend it. So, it's not \$6,000 for 2007, and

19 \$2,000 for 2008 in that form of window of time.

20 COMMISSIONER KUNASEK: Then after April 30th on

21 a non-election year, can they continue to raise funds

22 for that account?

23 MS. VARELA: Yes. It's through April 30th of

24 an election year, yeah.

25 COMMISSIONER KUNASEK: I see.

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1 issues were very important to us.

2 And you can see the first one was 24 days late,

3 the second one 28 days late, and third one was seven

4 days late. As you see in page seven, she was unaware of

5 this. She thought she was in compliance and she's

6 cooperated with us throughout the process and settlement

7 in getting up to this point. She acknowledges the

8 violations were unintentional and unknowing. She also

9 understands that we could fine her \$8,400 but we agreed

10 to settle this.

11 What she's agreed to pay is a fine or penalty

12 of \$2,500 in \$100 installments. Actually, \$100 now and

13 then \$250 a month.

14 COMMISSIONER PARKER: \$200 a month.

15 MR. LANG: \$200 a month beginning January 7th

16 until paid in full. And, of course, the penalty in

17 paragraph three on page four which makes it clear if she

18 doesn't fulfill the requirement, which is the monthly

19 payment, then the entire penalty will be paid in full.

20 And that's a, you know, boilerplate. We anticipate no

21 problem here but I wanted to ensure the Commission there

22 are some teeth if there is a problem.

23 But I think that's a fair resolution given that

24 her violations were unintentional. She is paying a

25 fine. And so we think this is a fair result.

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1 CHAIRPERSON BUSCHING: Any other discussion?

2 If not, the Chair will call for the

3 question, all in favor say, "aye."

4 (Chorus of ayes.)

5 CHAIRPERSON BUSCHING: Opposed, nay?

6 COMMISSIONER PARKER: Nay.

7 CHAIRPERSON BUSCHING: Chair votes aye. Motion

8 carries.

9 Back in the order of the agenda Item VI,

10 discussion and possible action on the following

11 conciliation agreements: A), Lisa Lovallo.

12 MR. LANG: Thank you, Madame Chair. The

13 Commission found reason to believe that there was a

14 violation on September 7th of this year. Since that

15 time, Commissioner Parker and our administrative

16 counselor Eric Peterson have been in ongoing settlement

17 negotiations with Ms. Lovallo and her attorney. And

18 what you have before you is the settlement which I'm

19 pleased to tell you is good news.

20 As you see in paragraphs four, five, and six,

21 what we have here is a delay in triggering the funds

22 report, which in this case were clearly unintentional

23 but are very serious because they delay matching funds

24 to the opponent. So, though Ms. Lovallo's opponent won

25 so there was ultimately no harm, the triggering fund

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1 CHAIRPERSON BUSCHING: Thank you. Other

2 questions of Mr. Lang?

3 Is there anyone from the public that wishes to

4 speak to this matter?

5 If not, turn to discussion or a motion by the

6 Commission and a thank you to Ms. Parker for acting on

7 this one.

8 COMMISSIONER SCARAMAZZO: Thank you.

9 Would you like to make the motion on this

10 issue since you negotiated it?

11 COMMISSIONER PARKER: Actually, Eric did most

12 of the leg work. So, thanks Eric.

13 I make a motion that we accept the conciliation

14 agreement in MUR 06-0015.

15 CHAIRPERSON BUSCHING: Second?

16 COMMISSIONER KUNASEK: Second.

17 CHAIRPERSON BUSCHING: It's been moved by

18 Commissioner Parker and seconded by Commission Kunasek

19 that we accept the conciliation agreement in MUR No.

20 06-0015. All in favor say, "aye."

21 (Chorus of ayes.)

22 CHAIRPERSON BUSCHING: Opposed, nay?

23 Chair votes aye. Motion carries.

24 Item VI(B). Mr. Lang?

25 MR. LANG: Thank you, Madame Chair. This is

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1 another proposed settlement agreement. This is in the  
 2 Torres matter. As you recall, there was a number of  
 3 violations because in particular one of the campaign  
 4 workers, Manny Torres, made expenses on behalf of the  
 5 campaign and often delays of days or even weeks before  
 6 he was reimbursed from the campaign. And that's a  
 7 violation because technically that's a contribution, an  
 8 in-kind contribution to the campaign.

9 Of course, again, we have unknowing and  
 10 unintentional violations, but it was a repeated one.  
 11 And I think they had some problems with keeping track of  
 12 some of their finances and I think that's why we saw so  
 13 many of these small violations.

14 But you have two primary problems. First, they  
 15 used primary funds to purchase services directed at the  
 16 general election, there were delays involved in the  
 17 production of the goods and services at issue, and  
 18 though they intended to use them in the primary, they  
 19 failed to do so.

20 And so we recommended and the Commission found  
 21 probable cause for a repayment order of \$25,838.63  
 22 towards that.

23 Because the matter was pending, the Respondent  
 24 attempted to set aside adequate money to pay that  
 25 amount, and, in fact, did set aside over \$25,000.

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1 huge. It's \$125,000. Our rules admit it's a \$10,000,  
 2 so we have a \$10,000 fine and \$25,000 repayment order  
 3 pending.

4 The conciliation agreement you see starting on  
 5 page three at paragraph 16 acknowledges that he did not  
 6 intend to violate the law. He's been quite cooperative  
 7 and helpful in showing the books and working with us to  
 8 get it remedied. And they set aside \$25,000 that he  
 9 could have spent on campaign expenses to get elected,  
 10 instead he forego that and gave that up and lost that  
 11 opportunity to communicate because he knew the  
 12 Commission had concerns. And that based on that, we  
 13 agree to the settlement of the repayment of the money  
 14 that he has left, the over \$25,000. And that he also  
 15 pay a penalty of \$2,500 because of those campaign  
 16 campaign limit violations.

17 Again, that fine could be \$10,000 but we think  
 18 in the interest of settlement, \$2,500 penalty is  
 19 reasonable especially as they always had money on hand  
 20 to pay the bills as they occurred.

21 So we recommend that the Commission approve  
 22 this settlement agreement. And unless you have any  
 23 questions, that concludes my presentation.

24 CHAIRPERSON BUSCHING: Thank you. Are there  
 25 questions of Mr. Lang?

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1 Unfortunately, due to some delayed payments and the  
 2 bookkeeping wasn't quite as accurate as they'd hoped and  
 3 because of the delay of others cashing checks and the  
 4 like, they're a few hundred dollars -- a little over  
 5 \$600 short. They did set aside \$25,000 exactly for this  
 6 purpose, to satisfy the Commission and any possible  
 7 repayment order.

8 They also received contributions in violation  
 9 of the Act that I eluded to. This is the in-kind  
 10 contribution payments that were made on behalf of the  
 11 Campaign. In all those cases, the campaign had the  
 12 money on hand to actually pay those items when they  
 13 occurred, they just didn't do so. While it was a  
 14 technical violation, they didn't get any advantage from  
 15 it those repeated technical violations. It's not like  
 16 the campaign consultants were fronting money that the  
 17 campaign didn't have until later.

18 For instance, say Torres had bought -- or say  
 19 Tarango had bought ad time and the Commission -- and the  
 20 Commission had not yet awarded primary funds or general  
 21 funds, that would be a significant problem. That is not  
 22 what happened here.

23 But there were repeated violations, so we  
 24 thought the penalty was in order even though it was  
 25 unintentional. You can see the potential penalty is

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1 Mr. Lang, the total amount for this office was  
 2 approximately \$100,000 in the general election?

3 Or how much did he get in the general  
 4 election?

5 MR. LANG: It's just under \$80,000. I thought  
 6 it was \$75,000, but it's \$80,000 for the general.

7 CHAIRPERSON BUSCHING: So we're talking about a  
 8 repayment of approximately a third of the amount?

9 MR. LANG: A little less than a third, yes.

10 CHAIRPERSON BUSCHING: And is a -- I mean, we  
 11 found that we've had this situation with respect to how  
 12 many other candidates that were in statewide races?

13 MR. LANG: Mr. Montgomery had to repay a  
 14 significant portion of his primary funds.

15 CHAIRPERSON BUSCHING: Okay. I'm just  
 16 wondering in concern that the current outcry over not  
 17 having enough funds to get the message out is directly  
 18 attributable to the fact that significant monies are  
 19 being paid back to the Commission. And, of course, if  
 20 your funds are reduced by a third, it will be a reason  
 21 to complain about that issue.

22 MR. LANG: I think -- I think that's true. But  
 23 I think also you saw the Munsil Campaign raise  
 24 significant concerns, and they not only got the full  
 25 funding, they got a lot of matching funds as well. They

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1 got a lot of money and they also believed they didn't  
 2 have enough money.  
 3 We heard that from all the candidates  
 4 consistently there wasn't enough money.  
 5 CHAIRPERSON BUSCHING: Okay. All right.  
 6 Commissioner Parker?  
 7 COMMISSIONER PARKER: I guess philosophically  
 8 my concern is the fact that we've had several cases  
 9 where people did spend primary money in the general and  
 10 as long as they paid it back we said don't do it again.  
 11 And what's going to happen down the road when somebody  
 12 does do that, and it makes the big difference in the  
 13 race when they dipped into the second pot ahead of time,  
 14 and we're really not doing anything to tell them not to  
 15 do that. As long as you keep that extra money when you  
 16 get it in the general, no big deal. And I guess  
 17 philosophically I'm having trouble justifying that.  
 18 MR. LANG: Madame Chair, Commissioner Parker,  
 19 this case to me philosophically is somewhat of a  
 20 Montgomery case where I feel that the campaign was  
 21 significantly harmed by the fact they had to hold aside  
 22 this money, that they couldn't spend those funds. I  
 23 think that's a real penalty.  
 24 I also think staff very clearly specified how  
 25 you can use primary funds when it comes in the general.

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1 And I think once we have the specificity, I think if  
 2 people continue to violate, I think harsher penalties  
 3 might be in order.  
 4 COMMISSIONER PARKER: Right now the teeth  
 5 aren't there in the sense of, you know, if you do this,  
 6 you're going to be slapped with a \$5,000 fine or  
 7 whatever number they decide to pick out. And what  
 8 happens if they didn't set the money aside, who would  
 9 pay the extra \$80,000?  
 10 MR. LANG: It would come from his personal  
 11 money if we order that. We were lucky in both cases  
 12 they set it aside.  
 13 COMMISSIONER PARKER: Okay. I think we dodged  
 14 a couple of bullets here.  
 15 COMMISSIONER KUNASEK: And there are a couple  
 16 of things that really I -- if the threat would be to get  
 17 from personal money, I think what you're going to see is  
 18 a watering down of the qualifications for a candidate.  
 19 If he's going to be concerned that if he does not  
 20 intentionally -- intentionally make a mistake or do  
 21 something wrong, that they're going to come after his  
 22 estate, you're going to get people that aren't going to  
 23 run. Period. And might be well qualified.  
 24 The other thing that seems to be inconsistent  
 25 is we allow for them to buy signs for the primary out of

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1 primary money and then they use those signs for the  
 2 general. There's an inconsistency there that I think  
 3 that we should begin to look at. If we can't use  
 4 primary funds for the general or we look the other way  
 5 with signs.  
 6 Just some questions.  
 7 CHAIRPERSON BUSCHING: Thank you.  
 8 Commissioner Jolley?  
 9 COMMISSIONER JOLLEY: Yes. That was a  
 10 statement made by an individual in public comment.  
 11 Because you get to keep those signs, right, and so you  
 12 run for re-election two years later --  
 13 COMMISSIONER KUNASEK: Sure.  
 14 COMMISSIONER JOLLEY: -- and how do they  
 15 justify those that are running for the first time and  
 16 they're out purchasing signs at a hundred dollars a  
 17 sign, and you got all this inventory remaining?  
 18 COMMISSIONER KUNASEK: Questions that were, I  
 19 guess, not thought of to begin with.  
 20 COMMISSIONER JOLLEY: Yes.  
 21 CHAIRPERSON BUSCHING: All right. Is there  
 22 anyone from the public that wishes to speak to this  
 23 matter? Sir?  
 24 MR. BARTON: My name is Jim Barton. I  
 25 represent the Torres Campaign.

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1 Madame Commissioner, first I wanted to address  
 2 Commissioner Parker's question about what's going to be  
 3 different in the future on these. And, hopefully, there  
 4 will be a rule that will explicitly state the way to  
 5 treat primary funds and way to treat general funds. As  
 6 we say in our response, and I still believe the rule at  
 7 the beginning of 2006 campaign was, that you had to  
 8 spend the money by the end of the primary. And the idea  
 9 which has been well developed by the staff and I  
 10 understand the policy reasons behind it, it just wasn't  
 11 in the rule and it wasn't in past opinions. So this  
 12 idea you can't use primary money for general elections  
 13 is a new rule.  
 14 So I think that we'll hopefully in 2008, you  
 15 will see fewer violations because hopefully there will  
 16 be a more explicit rule sort of laying things out  
 17 clearly.  
 18 I also want to point out again in this case I  
 19 think there is a move in the wrong direction frankly. I  
 20 think the old way, if you spent the money by the end of  
 21 primary is better. The reason I think that is it's  
 22 exemplifying the Torres situation. They wanted to get  
 23 the hand cards to pass out or send mailers out. They  
 24 started talking August 15th, which according to rules,  
 25 that's when you make the agreement, when they sort of

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1 made the contract.

2 There were delays and some of them were the  
3 fault of the Torres Campaign. But the fact is by  
4 September 22nd they had them instead of September 11th.  
5 This was honestly an effort to produce materials for the  
6 primary campaign.

7 I think, unfortunately, although I understand  
8 the good policy reasons which feels like a bright-line  
9 rule, don't spend money in the primary that you're going  
10 to target in the general, I think that enforcement is  
11 going to be tough. I think situations like we had in  
12 the Torres Campaign where, you know, just, you know, we  
13 didn't get the things produced on time and I think  
14 that's going to be tricky.

15 Now, hopefully candidates will be aware and  
16 they'll push things earlier. You know when I was  
17 thinking about this and had we known for sure if this  
18 was the requirement, what could we have done? I think  
19 we push the things up. Maybe the campaign could say,  
20 well, we didn't quite get the quote we wanted, just do  
21 it anyway, we have to get the flyers on the street  
22 before the primary. So hopefully that will improve  
23 that.

24 Also I wanted to explain something too about  
25 the reimbursement policies. I think that this is some

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1 place else where I hope maybe there was some improved  
2 rule making. And I hope too in my -- in our response,  
3 maybe Mike can take that as some suggestions too, we  
4 sort of submitted or pointed out some places things  
5 aren't as clear as you hope them to be.

6 In this case, it's sort of the opposite  
7 situation. I think if you go look at the rules, it  
8 would say you can't have reimbursement. That Manny  
9 should have never -- that Manny Tarango should never  
10 have bought anything for the campaign.

11 So we can't really be too self-righteous about  
12 this. The fact is, you can buy some things the same  
13 day, same day reimbursement is okay. I think what  
14 happened with the campaign is somehow they got -- they  
15 changed same day reimbursement is okay to timely  
16 reimbursement is okay. And I will acknowledge what Todd  
17 said and then in some cases were clearly just not as  
18 diligent as they should have been.

19 But I think some clear rules will also help in  
20 that. And I think the reason why some of the  
21 reimbursements, there were so many instances, was not so  
22 much the campaign was being careless, but the campaign  
23 was operating under the wrong rule. They were thinking  
24 in their mind, well, timely reimbursement is okay. And  
25 really the exception is same day reimbursements are

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1 okay.

2 And so, again, on the reimbursement and Todd  
3 said this, and just to reiterate, the campaign received  
4 no advantage from this. What happened is the campaign  
5 funds went out slower. So in other words, the campaign  
6 made an expenditure on, you know, September 22 and  
7 because Manny went out and bought, you know, a thousand  
8 dollars worth of signs, but then the campaign fund  
9 didn't go down until, you know, two weeks later.

10 Well that's not really -- they didn't get any  
11 extra money, the campaign didn't spend any extra money,  
12 the campaign didn't get any extra money. They delayed.  
13 You know, this idea that's like an in-kind contribution,  
14 it sure is if Manny intended to get reimbursed or never  
15 got reimbursed. But the fact is they did intend to, so  
16 they didn't get anything on each of these.

17 CHAIRPERSON BUSCHING: Commissioner Parker?

18 COMMISSIONER PARKER: Yes, I have a question.  
19 Would it not have been a disadvantage to the other  
20 campaign though that they would not have known the  
21 expenditures that were going out until two or three  
22 weeks later to qualify for whatever matching funds they  
23 may have been entitled to and things like that?

24 MR. BARTON: Madame Chair, Commissioners, I  
25 agree that had there been excessive expenditures it

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1 would have been a disadvantage to the other campaign and  
2 they wouldn't have known the excessive expenditures were  
3 made.

4 In this particular case I guess they didn't  
5 know we were spending money on signs as early as we were  
6 spending money on signs. So in this particular case,  
7 I'm not sure the opposing campaign suffered a  
8 disadvantage. I certainly understand why for the  
9 transparency we want to have all these things up front.

10 And as I said, I think that, you know, the  
11 other thing is there is a rule that if you only spend  
12 one from one fund or one account and I think that you  
13 can make an argument for that reason, you can never have  
14 reimbursement because in effect we spent from someone  
15 else's account and reimbursed it, so --

16 COMMISSIONER PARKER: To follow up, if -- if  
17 the expenditures were mostly likely for signs and things  
18 like that, why weren't campaign checks issued to the  
19 vendors rather than people putting it on the credit card  
20 or however it was done?

21 MR. BARTON: There's no reason. There's no  
22 reason for it. Well, the reason for that was the  
23 campaign is sort of -- they wanted to very tightly  
24 control -- they thought they were going to tightly  
25 control the expenses, so they limited the number of

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1 people they put on the checking account. They didn't  
2 have petty cash funds because they felt like petty cash  
3 funds can sort of can be abused. Well, both of these  
4 things were wrong decisions.

5 So what happened was you have an all-volunteer  
6 staff, and the co-manager, he didn't see the harm of  
7 paying for this sometimes thousand dollars at Home Depot  
8 and getting reimbursement. And there's no reason why.

9 And soon as they became aware of that problem,  
10 they changed that. They changed, one, they started  
11 having -- for the small things, they started having  
12 reimbursement the same day. And for the large  
13 expenditures they changed the policy and didn't have  
14 anymore of those, so --

15 COMMISSIONER PARKER: Okay. Thank you.

16 CHAIRPERSON BUSCHING: Any other questions for  
17 Mr. Barton?

18 COMMISSIONER KUNASEK: I'm concerned now -- Mr.  
19 Barton just mentioned another wrinkle -- of petty cash.  
20 At what point does the petty cash fund get reimbursed?

21 In other words, if they spend \$34 or whatever,  
22 \$37 for stamps today out of petty cash because they had  
23 to send a runner down to the post office, but they don't  
24 reimburse the petty cash fund until the balance gets  
25 low. How -- I guess it looks like another rule that

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1 should be addressed.

2 MR. BARTON: Madame Chair, Commissioner  
3 Kunasek, to tell you the truth, I don't know the rules  
4 about the petty cash and that's because this is the only  
5 Clean Elections' client that I have.

6 Now, I know there are rules about when it has  
7 to be reimbursed and I know many of the expenditures, if  
8 you notice if you go back and people make adjustments  
9 for \$20 for copies and \$40 worth of stamps. My  
10 understanding is that the structure of the Clean  
11 Elections Act assumes you will have a petty cash for  
12 those kind of expenditures so the treasurer is not  
13 writing a check for everything like that. I don't know  
14 -- I don't know the rules about reimbursement.

15 CHAIRPERSON BUSCHING: Ms. Varela?

16 MS. VARELA: Madame Chair, Commissioner Parker,  
17 I'd just like to address a couple of the points that you  
18 made.

19 In terms of the reporting, you said wouldn't  
20 the public be harmed by not having the reports? But the  
21 public doesn't have access to information on a daily  
22 basis. Participating candidates file the campaign  
23 finance reports when they're done pre-primary,  
24 post-primary, pre-general, post-general. So unless an  
25 expenditure or loan was made on a particular day, let's

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1 say during the primary period, and then it wasn't repaid  
2 until the post-primary, they're really not at a  
3 disadvantage as long as it's reported properly.

4 The public doesn't have access to expenditures  
5 on the daily basis. They have the campaign finance  
6 report when they're due to be filed with the Secretary  
7 of State's office and when they're available to the  
8 public.

9 And with respect to matching funds,  
10 expenditures by participating candidates don't trigger  
11 matching funds. So that would not have been an issue in  
12 the case either on the part of Mr. Torres or on the part  
13 of Jan Brewer. If independent expenditures were made,  
14 either for or against those would trigger. But  
15 expenditures by participating candidates don't trigger  
16 that, so that would not have been an issue in this case.

17 COMMISSIONER PARKER: Okay. Thank you.

18 CHAIRPERSON BUSCHING: Commissioner Jolley?

19 COMMISSIONER JOLLEY: I would just like to make  
20 a comment in reference to the issue of petty cash. I  
21 think there was a problem in a previous audit, because  
22 of -- I can't remember if it was you couldn't spend more  
23 than a hundred dollars or always had to have a thousand  
24 dollars in petty cash. How does that work?

25 MS. MCGEE: Commissioner Jolley, you're petty

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1 cash account can never go over a thousand dollars. So  
2 if they spend a hundred dollars one day, they can -- if  
3 they have a thousand dollars, they can spend a hundred  
4 dollars of the thousand dollars and reimburse up to that  
5 thousand dollars.

6 Just every day your petty cash account cannot  
7 be more than a thousand dollars.

8 COMMISSIONER JOLLEY: Thank you.

9 MS. MCGEE: You're welcome.

10 CHAIRPERSON BUSCHING: Any other questions for  
11 Mr. Barton?

12 Thank you. Anyone else from the public wish to  
13 speak to this matter?

14 If not, turn to Mr. Lang. Do you have any  
15 summary or --

16 MR. LANG: Madame Chair, thank you.  
17 Commissioners. I think that this is a fair result. I  
18 think it sends out a message that compliance is  
19 required.

20 We are going to make some of the rule changes  
21 that Mr. Barton recommends regarding clarity in the use  
22 of primary funds in the general and to address  
23 Commissioner Kunasek's concern. The rule has always  
24 been, so long as you use it significantly in the  
25 primary, there's no reason to re-buy it in the general.

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1 And the problem we had in these cases is they  
 2 were buying things in the primary that has no use in the  
 3 primary and that's where we draw the line. And that's  
 4 where we need to state that more clearly and take the  
 5 advice you give us as Commissioners on how you want that  
 6 work.  
 7 In the meantime I think this is a fair result.  
 8 It's a significant chunk of change to give up in your  
 9 campaign, \$25,000. And it's a real penalty of \$2,500.  
 10 I think it's a fair compromise when a \$10,000 penalty  
 11 could have been enforced.  
 12 CHAIRPERSON BUSCHING: Thank you. Discussions  
 13 or motions by the Commission?  
 14 COMMISSIONER SCARAMAZZO: I move to approve the  
 15 conciliation agreement in MUR 06-0021 and 06-0026.  
 16 COMMISSIONER KUNASEK: Second.  
 17 CHAIRPERSON BUSCHING: It's been moved by  
 18 Commissioner Scaramazzo and seconded by Commissioner  
 19 Kunasek that we approve the proposed conciliation  
 20 agreement in MUR 06-0021 and 06-0026. Any further  
 21 discussion?  
 22 If not, the Chair will call for the question,  
 23 all in favor say, "aye."  
 24 (Chorus of ayes.)  
 25 CHAIRPERSON BUSCHING: Opposed, nay?

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1 year expenses --  
 2 MS. MURPHY: Yes.  
 3 CHAIRPERSON BUSCHING: -- and revenues. And in  
 4 particular I looked at our calendar year-to-date  
 5 expenses on other operating expenditures, and we're  
 6 showing a total amount there of \$70,196 through  
 7 November. And yet we've budgeted \$940,000 next year for  
 8 the same line item. More than a tenfold increase.  
 9 Could you explain that?  
 10 MS. MURPHY: And this was for other operating  
 11 expenses?  
 12 CHAIRPERSON BUSCHING: Exactly.  
 13 MS. MURPHY: Okay. So in terms of for the  
 14 approval, is that included for -- is that what you're  
 15 asking, for the '06 and what we're giving back for  
 16 revenue?  
 17 CHAIRPERSON BUSCHING: No. I'm asking -- this  
 18 agenda item is discussion and possible action on  
 19 Commission's 2007 calendar year budget, and the budget  
 20 is showing a total expenditure under other operating  
 21 expenditures of \$940,000. And I'm asking what the  
 22 \$940,000 consists of, since this year under other  
 23 operating expenditures we've only spent \$70,196 through  
 24 November.  
 25 MS. MCGEE: Chair, if we just take the items as

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1 Chair votes aye. Motion carries.  
 2 Moving on to Agenda Item VII, discussion and  
 3 possible action on Commission's 2007 calendar year  
 4 budget.  
 5 Ms. McGee, is this --  
 6 MS. MCGEE: I'm going to turn this over to  
 7 Christina Murphy. This is -- as the Fiscal Services  
 8 Manager, she's going to present the 2007 budget to you.  
 9 MR. LANG: For the very first time.  
 10 MS. MURPHY: Yes. And she's staying with me.  
 11 CHAIRPERSON BUSCHING: Thank you. Ms. Murphy?  
 12 MS. MURPHY: Good morning, Madame Chair and  
 13 Commissioners.  
 14 COMMISSIONER JOLLEY: Good morning.  
 15 MS. MURPHY: Nice to see you. I am asking for  
 16 approval for the \$2,417,409 to go to general fund for  
 17 2006. And I am here for any questions.  
 18 CHAIRPERSON BUSCHING: Ms. Murphy, I have a  
 19 question.  
 20 MS. MURPHY: Yes, ma'am.  
 21 CHAIRPERSON BUSCHING: I felt a little at a  
 22 disadvantage looking at all of these without having  
 23 current year revenue data and current year expenses.  
 24 But I went to our information items and, of course, low  
 25 and behold every month we get information on current

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1 Christina -- that's something we will address in a few  
 2 minutes. What we would like to do is finish up our 2006  
 3 information for you first.  
 4 As you know, the Commission has to look at the  
 5 revenues over a four-year period. And every year we  
 6 have to give money back to the general fund if our fund  
 7 contains more money than the Commission deems necessary.  
 8 So, at the end of every year we look at the projections  
 9 that we have made and then we give back money -- a  
 10 portion of the money over our expenditure cap.  
 11 So what we would like to do first before we get  
 12 into the 2007 budget is take care of our 2006  
 13 housekeeping. So, the first item Christina has is  
 14 asking your approval that for 2006 we're going to give  
 15 the general fund approximately \$2.4 million. And this  
 16 is based on our projected -- our revenue that we  
 17 received in 2006 -- or, I'm sorry.  
 18 It's based on the income tax return which was  
 19 filed in 2006 times the \$5 -- if you remember these  
 20 calculations that we have every year -- which gives us  
 21 our cap on spending. Then we take our revenues that  
 22 we've received for 2006 minus our cap on spending, and  
 23 the difference is the amount that we give to the general  
 24 fund.  
 25 It's the amount that the Commission deems this

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1 is not necessary money, it's more money than what the  
 2 Commission needs. We will give it to the general fund.  
 3 And this is something that we do every single year. So,  
 4 it's just housekeeping for 2006 before we get into 2007.  
 5 So we ask for your approval that the Commission  
 6 give the general fund \$2.4 million for 2006.  
 7 COMMISSIONER SCARAMAZZO: Is that just being  
 8 generous or is that by statute?  
 9 MS. MCGEE: It's by statute, Commissioner  
 10 Scaramazzo.  
 11 COMMISSIONER SCARAMAZZO: Okay.  
 12 CHAIRPERSON BUSCHING: Ms. Varela, I guess I'm  
 13 asking -- I'm concerned -- I'm asking for legal advice  
 14 as to whether this was properly noticed on the agenda.  
 15 Because as I read the agenda item it says, "Action on  
 16 2007 calendar year budget" and doesn't specifically  
 17 refer to a separate agenda item on --  
 18 MS. VARELA: Right. I agree with that.  
 19 MS. MCGEE: Okay. We've always in the past  
 20 given back -- yes, we have, Chair.  
 21 Always in the past it's been one issue. We  
 22 give back the money and then we continue with the  
 23 budget. But however you would like, we can continue  
 24 this and not give the money back until January. That's  
 25 fine with us.

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1 criminal activity in our society in the state of  
 2 Arizona, like DUIs and that type of thing.  
 3 So it probably -- probably have more money at  
 4 the end of December 31st.  
 5 Of this year and on the -- I think you were  
 6 asking about the other.  
 7 CHAIRPERSON BUSCHING: Right.  
 8 COMMISSIONER JOLLEY: -- expenditures?  
 9 CHAIRPERSON BUSCHING: Uh-huh.  
 10 COMMISSIONER JOLLEY: Let me see, where did  
 11 that -- didn't that have to do with the campaign and the  
 12 voter education?  
 13 MS. MCGEE: For -- we split -- as you know, our  
 14 budget is split with our administration and enforcement  
 15 and voter education. And we present the budget split up  
 16 between our different issues that we have at the  
 17 Commission.  
 18 So, if -- I don't know exactly which other  
 19 expenses that the Chair is referring to. We have 17,100  
 20 which we will be glad to go over and then we also have  
 21 18,000. And then over our total budget completely we  
 22 add those together.  
 23 So we can go through and we can disclose what  
 24 the \$940,000 includes.  
 25 MR. LANG: I'll explain it to her here.

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1 MS. VARELA: Okay. If it's been noticed this  
 2 way in the past then it's something we haven't caught,  
 3 because I do agree that in the event somebody were to be  
 4 interested in this particular item, I don't think they  
 5 would know that by this agenda item.  
 6 MS. MCGEE: We can pull that then.  
 7 MS. VARELA: I'm sorry. Does that cause a  
 8 problem in terms of giving the money back or how the  
 9 Commission is supposed to give it back?  
 10 MS. MCGEE: No. We can give it back at our  
 11 pleasure. We normally do it at the end of year.  
 12 MS. VARELA: I recommend -- nobody may show up  
 13 on the agenda item, but there may be somebody  
 14 particularly interested in that. And like I said, I  
 15 don't think people would know that was what was going to  
 16 happen with this agenda item.  
 17 So, thank you, Madame Chair.  
 18 CHAIRPERSON BUSCHING: Commissioner Jolley, did  
 19 you have something?  
 20 COMMISSIONER JOLLEY: I just wanted to comment  
 21 because I believe that under the Commission assessments  
 22 that we've received -- or the court assessments -- they  
 23 are generally increased from one year to the other and  
 24 have increased significantly, especially as we get  
 25 closer to the end of the year. Apparently that's more

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1 (Whereupon an off-the-record discussion was  
 2 held.)  
 3 MS. MCGEE: What we -- the monthly statement of  
 4 operations is our actual expenses. Our budget is a  
 5 proposed, what we're asking for 2007 for things that are  
 6 going to happen in 2007. One thing we're looking at as  
 7 Todd has mentioned in prior meetings, we're looking into  
 8 expanding the office, that will be an increase to our  
 9 other operating expenses. So we've had to budget a  
 10 certain portion for the cost if we include more space  
 11 for the office.  
 12 So a proposed budget is not the actual money  
 13 we're going to spend, it's the possibility of money that  
 14 we could spend.  
 15 MR. LANG: Matching funds, we have a lot more.  
 16 MS. MCGEE: Right. For candidate funding we  
 17 budgeted \$20 million, but we only spent \$9 million. So  
 18 we always budget for things that we would like to do in  
 19 the future, not what we actually have done in the past.  
 20 So for the 2007 budget, of course we can go  
 21 through and we can explain why we have budgeted the  
 22 amounts we budgeted, but it's for things like that.  
 23 We're looking into a new phone system, we're looking  
 24 into a new server, we need to buy a new photocopier.  
 25 It's those type of expenditures that we anticipate

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1 making in the 2007 year. So that's why we budgeted for  
2 the items. We may or may not purchase those.

3 CHAIRPERSON BUSCHING: Ms. McGee, I appreciate  
4 your comments. And I see that the capital equipment  
5 line item we've spent thus far this year \$33,000 in  
6 capital equipment and we've budgeted \$96,000 for next  
7 year. And certainly those things will come into play  
8 there.

9 But perhaps I can come around and show you the  
10 different -- the two line items that I'm looking at and  
11 you can explain the difference.

12 MS. MCGEE: Just mention them to us and we have  
13 them right here.

14 CHAIRPERSON BUSCHING: Here it shows \$70,000  
15 year to date.

16 MS. MCGEE: Right.

17 CHAIRPERSON BUSCHING: And over here we're  
18 showing \$940,000 for next year.

19 MS. MCGEE: Right. And that's going to include  
20 different expenditures what we've made for 2007. That  
21 includes Mike's information -- this includes both we  
22 have a larger expenditure for voter education this year,  
23 we have more information for money that we're going to  
24 spend if we move to a larger office that we need to have  
25 budgeted.

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1 This is just what we actually spent in 2006.

2 It doesn't really tell you anything that we're going to  
3 spend in 2007. 2006 we were not -- we didn't anticipate  
4 moving in 2006. In 2007 we anticipate enlarging our  
5 office. We anticipate including more equipment to the  
6 office. We anticipate voter education, more voter  
7 education materials that Mike uses in his educational  
8 classes. We're going to include videotaping Mike's  
9 candidate treasurer classes. So that's going to be a  
10 larger expenditure to have all of Mike's classes  
11 videotaped so we can put it up on the Website and send  
12 it out to candidates. And that's going to be another  
13 large expenditure that's included in the other operating  
14 expenses.

15 CHAIRPERSON BUSCHING: Okay. I apologize for  
16 not getting back to you before the meeting on this  
17 issue, but I would like to defer this and get a  
18 breakdown and a better understanding on the fact that  
19 we're talking about going from an 11-month expenditure  
20 of \$70,000 to next year's 12-month expenditure of  
21 \$940,000.

22 MS. MCGEE: We'd be glad to answer any  
23 questions you have.

24 CHAIRPERSON BUSCHING: I'll be happy to approve  
25 the rest of the budget, but that particular line item I

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1 would like to see more detail on.

2 Commissioner Jolley?

3 COMMISSIONER JOLLEY: Just one comment because  
4 I notice that in past years the general fund received  
5 \$1.7 million, and then in 2004 they received \$3.8, and  
6 then it was reduced to less than a million. And  
7 hopefully the State General Fund isn't expecting a large  
8 share of this budget from Citizens Clean Elections  
9 Commission.

10 MS. MCGEE: Our contact with the joint  
11 legislative budget is our money -- even though we feel  
12 \$2.4 million is a large amount -- in the overall picture  
13 of the budget, they're not really waiting for the money  
14 from Clean Elections. They're happy to accept it, but  
15 they're not waiting to allocate it to someone else,  
16 Commissioner.

17 COMMISSIONER JOLLEY: Okay. Thank you.

18 CHAIRPERSON BUSCHING: And I think the other  
19 issue is that they're certainly aware it goes up and  
20 down depending on whether it's an election year.  
21 Because obviously a lot more gets spent in an election  
22 year, so --

23 COMMISSIONER JOLLEY: Yes.

24 CHAIRPERSON BUSCHING: Other questions?  
25 Commissioner Parker?

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1 COMMISSIONER PARKER: You talk about expanding  
2 the office, are you looking at adding additional staff?

3 MS. MCGEE: Not at this time, no. As Todd has  
4 mentioned in the past, we're busting as the seams right  
5 now. We've taken the files out of the file room and  
6 created an office for additional staff. So now we're  
7 down a file room. And we've asked the Department of  
8 Administration to look into if there's space for us to  
9 move. If there's space here that we could rent to have  
10 a new file room, additional space for us.

11 MR. LANG: Ideally on that issue we have a  
12 self-contained office where this room and the break room  
13 are in the same complex with the rest. The idea of  
14 going outside to come over here, I'm not thrilled with  
15 security-wise and otherwise. I can -- you can hear my  
16 conversations in the hallways here outside the office,  
17 and not just because I'm loud. That's something we're  
18 looking at.

19 Is it likely we're going to move? I would say  
20 no because I'd say having the right real estate is going  
21 to be hard to do. But it's something we want to budget  
22 for in case the opportunity presents itself. But if I  
23 was betting, I would say we're not going to move. But  
24 if we can, we will.

25 CHAIRPERSON BUSCHING: Other questions or



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1 discussion?  
 2 Is there a motion?  
 3 COMMISSIONER KUNASEK: Well, did I understand  
 4 you that you would like to defer this?  
 5 CHAIRPERSON BUSCHING: I would like to defer at  
 6 least that one line item. And I guess I would ask staff  
 7 whether they would prefer the whole thing be deferred or  
 8 defer just that line item?  
 9 MS. MURPHY: Yes.  
 10 MS. MCGEE: That's fine.  
 11 CHAIRPERSON BUSCHING: All right. Then we'll  
 12 defer it, put it on the agenda for next meeting and  
 13 we'll move to Item VIII, nomination and election of  
 14 Chair for 2007.  
 15 COMMISSIONER SCARAMAZZO: Thank you, Ladies.  
 16 MR. LANG: Nice job.  
 17 CHAIRPERSON BUSCHING: Under the statute the  
 18 Commissioners shall elect a Chair to serve for each  
 19 calendar year period from among their members whose  
 20 terms expire after the conclusion of that year. Three  
 21 Commissioners shall constitute a quorum.  
 22 I want to say that I have thoroughly enjoyed  
 23 serving as your Chairman for the past two years, but I  
 24 feel that it's very appropriate that one person  
 25 shouldn't hog the Chairmanship.

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1 next to last Thursday of each month. Have Commissioners  
 2 had an opportunity to take a look at their calendars and  
 3 see if there's issues?  
 4 I know Ms. Parker you had a couple of  
 5 issues.  
 6 COMMISSIONER PARKER: Yes. There would be two  
 7 dates where I would not be available to come to Phoenix.  
 8 CHAIRPERSON BUSCHING: And --  
 9 COMMISSIONER PARKER: That would be the  
 10 February meeting I could do by phone. I will be out of  
 11 town. And the May meeting I would be hard pressed to  
 12 even do that one on the phone.  
 13 CHAIRPERSON BUSCHING: Okay. I -- Mr. Lang,  
 14 were you able to investigate whether there were  
 15 alternative dates in those months that don't present  
 16 conflicts or were you aware of those conflicts?  
 17 MR. LANG: I wasn't aware of the conflicts, but  
 18 my suggestion for May is May 17th, if that works for  
 19 both.  
 20 COMMISSIONER PARKER: I have a conflict on the  
 21 17th as well.  
 22 COMMISSIONER KUNASEK: My only comment is I --  
 23 I will not be here for the January or February meeting.  
 24 MR. LANG: Will you be available by phone?  
 25 COMMISSIONER KUNASEK: I doubt it. I will be

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1 And so as Chairman and the one first speaking,  
 2 I would like to nominate Gary Scaramazzo to be Chairman  
 3 for the upcoming year. I think that he'll do an  
 4 excellent job. He brings a balanced perspective to the  
 5 Commission. And has served us well all these years so  
 6 far and has now gained the experience to serve as an  
 7 excellent Chairman.  
 8 COMMISSIONER JOLLEY: I'll second that.  
 9 CHAIRPERSON BUSCHING: It's been moved and  
 10 seconded that Gary Scaramazzo serve as Chairman for the  
 11 upcoming year. Any discussion?  
 12 If not, the Chair will call for the question,  
 13 all in favor say, "aye."  
 14 (Chorus of ayes.)  
 15 CHAIRPERSON BUSCHING: Opposed, nay?  
 16 Chair votes aye. And by acclamation --  
 17 COMMISSIONER JOLLEY: It's all yours.  
 18 COMMISSIONER SCARAMAZZO: Commissioners, thank  
 19 you. I think.  
 20 CHAIRPERSON BUSCHING: Thank you. All right.  
 21 We move to Item IX, discussion and possible action on  
 22 proposed Commission meeting dates for January through  
 23 June of 2007.  
 24 Staff has included in our packets proposed  
 25 meeting dates, which for the most part are the last or

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1 down way south and I've checked into cell phone services  
 2 down there and it appears to be virtually slim or  
 3 non-existent.  
 4 COMMISSIONER SCARAMAZZO: However, I will let  
 5 you know, Carl, that my cell phone worked in Cancun.  
 6 COMMISSIONER KUNASEK: Thank you. I'll take  
 7 yours.  
 8 CHAIRPERSON BUSCHING: Commissioner Jolley?  
 9 COMMISSIONER JOLLEY: Yes. I'll be available  
 10 by telephone for the January 25th meeting.  
 11 CHAIRPERSON BUSCHING: Oh, great.  
 12 Commissioner Kunasek, are you available  
 13 on other dates in January?  
 14 COMMISSIONER KUNASEK: No. Well, yeah, prior  
 15 to the 10th.  
 16 CHAIRPERSON BUSCHING: Oh. But then not until  
 17 into February?  
 18 COMMISSIONER KUNASEK: I will be back in this  
 19 country probably the 5th of March.  
 20 COMMISSIONER SCARAMAZZO: We are envious green,  
 21 but have a good time.  
 22 COMMISSIONER PARKER: Yeah.  
 23 COMMISSIONER KUNASEK: My wife is still trying  
 24 to give me some heart burn.  
 25 CHAIRPERSON BUSCHING: I guess what it would

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1 seem to me to make sense, since we have the possibility  
 2 of two issues with respect to the February meeting,  
 3 perhaps we can defer approving the February and May  
 4 dates and go ahead and approve the other dates today,  
 5 and then look -- have staff look and see if we can come  
 6 up with better dates for February, as I'm concerned that  
 7 we'll be down to --  
 8 COMMISSIONER KUNASEK: A quorum.  
 9 CHAIRPERSON BUSCHING: -- yeah, if we don't.  
 10 So, Mr. Lang would that work for you?  
 11 MR. LANG: Yes. Sure.  
 12 CHAIRPERSON BUSCHING: Okay. Then would  
 13 someone like to make a motion that we approve all of  
 14 these proposed dates except for February or May?  
 15 COMMISSIONER PARKER: So moved.  
 16 CHAIRPERSON BUSCHING: Second?  
 17 COMMISSIONER KUNASEK: Second.  
 18 CHAIRPERSON BUSCHING: It's been moved by  
 19 Commissioner Parker and seconded by Commissioner Kunasek  
 20 that we approve the proposed dates with the exception of  
 21 the dates set for February and May. All in favor say,  
 22 "aye."  
 23 (Chorus of ayes.)  
 24 CHAIRPERSON BUSCHING: Opposed, nay?  
 25 Chair votes aye. Motion carries.

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1 MR. LANG: I'm a lawyer.  
 2 COMMISSIONER SCARAMAZZO: So we're covered  
 3 then.  
 4 CHAIRPERSON BUSCHING: On a personal level, I  
 5 want to say that I really enjoyed getting to meeting you  
 6 in more depth of the COGEL conference where you have  
 7 more chance to talk to people and get to know more about  
 8 them. And you can be proud of the accomplishments that  
 9 occurred during the last five years. I think staff has  
 10 improved.  
 11 (Whereupon Commissioner Kunasek leaves the  
 12 meeting room.)  
 13 CHAIRPERSON BUSCHING: Communication has  
 14 improved. Complaints have decreased. The education of  
 15 candidates and the public has increased. And we  
 16 appreciate your prodding, your comments, your changes.  
 17 Your perspectives have been very valuable for the  
 18 Commission and we're going to miss you.  
 19 COMMISSIONER JOLLEY: Well, I want to thank  
 20 you. And it's been quite educational and I was very  
 21 happy to serve. And thanks to Clean Elections.  
 22 Even Legislative District 24 made history this  
 23 year, we now have three females coming to the  
 24 legislature. That is unheard of in our area.  
 25 So I've been very happy and very proud to be

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1 We've already done No. X, so we go to No. XI,  
 2 and that is appreciation to Ermila Jolley for her  
 3 service to the Commission.  
 4 And I want to say as Chairman of the Commission  
 5 that I've enjoyed working with you for the past four  
 6 years. I know that you've been on the Commission for  
 7 five years. And in my belief you certainly have brought  
 8 to the Commission the kind of person that the drafters  
 9 of this legislature envisioned. You've brought the  
 10 commitment to Democratic values, the rural perspective,  
 11 Democratic perspective, and diversity.  
 12 And in your serving on the Commission, you've  
 13 always been fair. You've been very considerate of the  
 14 additional hurdles and distances involved for both  
 15 candidates and everyone else. And the politics that  
 16 occur in a rural situation.  
 17 And so you've made sure that the system works  
 18 for not only the people that are here locally, but the  
 19 people that are in the more rural areas. And for the  
 20 lawyers or for those that are not lawyers and not so  
 21 sophisticated --  
 22 COMMISSIONER SCARAMAZZO: Do you have to be  
 23 sophisticated to be a lawyer or vice versa?  
 24 CHAIRPERSON BUSCHING: No. Neither one.  
 25 MS. VARELA: Todd is a lawyer.

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1 part of the Citizens Clean Elections and know that we  
 2 look forward to that. And Arizona has certainly made  
 3 history in the nation. So thank you.  
 4 (Whereupon Commissioner Kunasek is present.)  
 5 CHAIRPERSON BUSCHING: And on behalf of the  
 6 Commission, we have a plaque that says, "In appreciation  
 7 of your outstanding service and dedications to the  
 8 Citizens Clean Elections Commission and the State of  
 9 Arizona from February 1st, 2002 to January 31st, 2007"  
 10 -- or longer if somebody doesn't get appointed --  
 11 "presented to Ermila Jolley on behalf of the Citizens  
 12 Clean Elections Commission, Marcia J. Busching, Gary  
 13 Scaramazzo, Carl J. Kunasek, and Royann J. Parker."  
 14 COMMISSIONER JOLLEY: Well, thank you.  
 15 I'll miss the drive.  
 16 COMMISSIONER SCARAMAZZO: I was going to say we  
 17 better get you a new car to make up for the one you  
 18 burned out, but the plaque will have to do, okay?  
 19 MR. LANG: No more date shakes for you.  
 20 COMMISSIONER JOLLEY: At least I don't have to  
 21 drive as far as Commissioner Scaramazzo.  
 22 CHAIRPERSON BUSCHING: Long enough though.  
 23 COMMISSIONER JOLLEY: Yeah. Thank you.  
 24 COMMISSIONER SCARAMAZZO: Thank you.  
 25 COMMISSIONER KUNASEK: Five years?

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1 COMMISSIONER JOLLEY: Five years. Time has  
2 flown.  
3 CHAIRPERSON BUSCHING: All right. Anyone else  
4 on this matter or can we move -- Mr. Lang?  
5 MR. LANG: Speaking on behalf of myself and  
6 staff, we certainly enjoyed working with Commissioner  
7 Jolley. Her questions were always well taken. She  
8 called us with interesting comments and advice. I  
9 enjoyed working with her when I was in Diana's position  
10 of Assistant AG. And I know one of the reasons I  
11 applied for this position is I knew I had a strong  
12 Commission to work with, including you. And I certainly  
13 enjoyed both your support and guidance in your time  
14 here.  
15 So thank you. I know staff here feels the same  
16 way.  
17 COMMISSIONER JOLLEY: Thank you.  
18 COMMISSIONER KUNASEK: I want to add as one of  
19 the newcomers here, it was a pleasure to be with you,  
20 sat next to you, serve with you, and wish you well in  
21 future activities.  
22 COMMISSIONER JOLLEY: In retirement.  
23 COMMISSIONER SCARAMAZZO: Well deserved.  
24 COMMISSIONER JOLLEY: Thank you.  
25 COMMISSIONER PARKER: Very well deserved.

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1 of that. And I just want to thank you and wish you a  
2 happy holidays.  
3 COMMISSIONER JOLLEY: Thank you.  
4 CHAIRPERSON BUSCHING: Thank you very much.  
5 COMMISSIONER SCARAMAZZO: Happy holidays also.  
6 CHAIRPERSON BUSCHING: Same to you.  
7 Anyone else from the public wish to  
8 speak?  
9 If not, Item XIII, adjournment. Is there a  
10 motion?  
11 COMMISSIONER PARKER: So moved.  
12 COMMISSIONER KUNASEK: So moved. Second.  
13 Whatever.  
14 CHAIRPERSON BUSCHING: It's been moved by  
15 Commissioner Parker and seconded by Commissioner Kunasek  
16 that we adjourn. All in favor say, "aye."  
17 (Chorus of ayes.)  
18 CHAIRPERSON BUSCHING: Opposed, nay?  
19 Chair votes aye. Motion carries.  
20  
21 (Whereupon the proceeding concludes at 11:46  
22 a.m.)  
23  
24  
25

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1 COMMISSIONER JOLLEY: Thank you. I appreciate  
2 it.  
3 CHAIRPERSON BUSCHING: Thank you. Agenda Item  
4 XII, call for public comment. This is the time for  
5 consideration and discussion of comments and complaints  
6 from the public. Action taken as a result of public  
7 comment will be limited to directing staff to study the  
8 matter or rescheduling the matter for further  
9 consideration and decision at a later date or responding  
10 to criticism.  
11 Sir?  
12 MR. EHST: Madame Chairman, Commissioners, Eric  
13 Ehst from the Clean Elections Institute. I don't want  
14 to prolong this meeting anymore than we've already gone.  
15 As a member of the public, I want to express my thanks  
16 to Commissioner Jolley for her service and also to  
17 Commissioner Busching for her Chairmanship over the past  
18 two years. I know how burdensome it can be to serve on  
19 one of the public bodies, particularly if you're from  
20 outside of Maricopa County. And you've given exemplary  
21 service.  
22 And by extension to the rest of the Commission,  
23 you all I know strive your very best to be reasonable  
24 and consistent and fair in all matters and -- and I,  
25 speaking for the vast public here, am very appreciative

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1 C E R T I F I C A T E  
2  
3 I, Angela Furniss Miller, Certified Reporter,  
4 do hereby certify that the foregoing pages numbered 1  
5 through 104, inclusive, constitute a full and accurate  
6 printed record of my stenographic notes taken at said  
7 time and place, all done to the best of my skill and  
8 ability.  
9 DATED, at Phoenix, this 25th day of January,  
10 2007.  
11  
12  
13  
14 Angela Furniss Miller, RPR  
15 Certified Reporter (AZ50127)  
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